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Bulletin Index-Digest System

Basic Volume
1953-1986

Service 3 Employment Taxes

The synopses in this publication are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

Department of the Treasury
Internal Revenue Service
Publication 643 (Rev. 12-86)

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We welcome your comments and any suggestions you may have for making future editions of the *Bulletin Index-Digest System* more useful to you. Please send them to: *Director,* Tax Forms and Publications Division, Internal Revenue Service, Washington, D.C. 20224.

The complete *Bulletin Index-Digest System,* or any of the individual Services, may be purchased on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Any questions concerning subscriptions should be addressed to the Superintendent of Documents.

Introduction

The Bulletin Index-Digest System provides a method for researching matters published since 1952 in the Internal Revenue Bulletin, which is the authoritative instrument of the Commissioner for announcing official rulings and procedures of the Internal Revenue Service and for publishing Public Laws, Treasury Decisions, and other items of general interest. It is divided into four Services as follows:

Service No. 1—*Income Tax*, Publication 641 (12–85)
Service No. 2—*Estate and Gift Taxes*, Publication 642 (12–86)
Service No. 3—*Employment Taxes*, Publication 643 (12–86)
Service No. 4—*Excise Taxes*, Publication 644 (12–86)

Each Service consists of a basic volume and the latest cumulative supplement. The cumulative supplements are issued quarterly for the Income Tax Service, and semiannually for the other three Services. Periodically the material in the basic volume and the cumulative supplement will be combined in a new basic volume.

Digests

The major portion of this Bulletin Index-Digest System consists of digests (brief summaries) of Revenue Rulings and Revenue Procedures alphabetically arranged under topical headings and subheadings, along with digests of Supreme Court decisions, adverse Tax Court decisions on cases involving tax issues in which the Commissioner has announced acquiescence or nonacquiescence, Executive Orders, Treasury Department Orders, Delegation Orders, and other miscellaneous items published in the Bulletin. Each digest is preceded by descriptive "key words" that further identify the subject matter and is followed by a citation to the Code and Regulations section under which the item was published, and also a citation to the item and the Bulletin in which the full text of the item may be found. The arrangement of digests under topical headings makes it possible to use the "subject matter" approach to find the Revenue Rulings or other items most specifically on point on a particular issue. Public laws, Treasury Decisions, and Tax Conventions are not digested, but are listed in separate finding lists.

The digests are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

The topical headings used in arranging the digests are selected from the List of Topical Headings Used, beginning on page vi.

Findings Lists

The System contains finding lists arranged in various forms to accommodate alternate methods of Bulletin research. Each item in the finding lists includes a citation to a numbered digest, or to the Bulletin where the full text of the item may be found.

Internal Revenue Code. Separate finding lists are provided for (1) Revenue Rulings, Revenue Procedures, and other items published under a particular section of the Internal Revenue Code and the Regulations thereunder, and (2) the Public Laws that amend the Internal Revenue Code and Treasury Decisions that amend regulations.

Statement of Procedural Rules. Separate finding lists are provided for (1) the Statement of Procedural Rules, and (2) Revenue Procedures relating to matters covered by the Statement of Procedural Rules.

The following special finding lists provide additional means of searching for particular items:

Decisions of the Supreme Court. Supreme Court decisions published in the Bulletin are listed alphabetically by case name.

Revenue Rulings and Revenue Procedures Under Tax Conventions. Revenue Rulings and Revenue Procedures that provide technical or procedural guidance with respect to a Tax Convention appear under the name of the country to which the rulings or procedures apply.

Miscellaneous Items Published in the Bulletin. This is a list of Delegation Orders, Executive Orders, Treasury Department Orders, and other miscellaneous Bulletin items that are not included in other special finding lists.

Listing of Revenue Rulings and Revenue Procedures. Revenue Rulings and Revenue Procedures that have been issued from 1953 through 1986, inclusive, and have not been specifically revoked, superseded, or declared obsolete, are listed numerically.

Actions on Previously Published Revenue Rulings and Revenue Procedures. All Revenue Rulings and Revenue Procedures that have been affected by later published rulings or procedures are listed in numerical order. Each listing identifies the later item; indicates whether the original item was modified, revoke, superseded, or otherwise affected, and includes a citation to the Bulletin where the later item may be found.

Public Laws Published in the Bulletin. This is primarily a list of Public Laws amending the Internal Revenue Code, arranged in sequence, by Public Law number. Each listing includes the popular title of the law, if any, and citations to the law and the related committee reports published in the Bulletin. Also included are listings of other Public Laws published in the Bulletin that, while not primarily concerned with Federal taxes, make some reference to tax matters.

All Previous Index-Digest Volumes Replaced

The December 1986 basic volumes cover material published in the Bulletin after 1952. They replace all previously issued Index-Digest volumes.

Nearly all pre-1953 published rulings identified as having significant application to future transactions have been republished as Revenue Rulings under current law and regulations. Thus, these basic volumes and their periodic cumulative supplements provide a substantially complete research and reference guide to Bulletin material.

How to Use Your Bulletin Index-Digest System

The Bulletin Index-Digest System is designed primarily to help you find the Service position on any tax issue covered in material published in the Internal Revenue Bulletin. You will also find it useful for researching laws, regulations, and other matters published in the Bulletin. You can find the items published in the Bulletin that deal with your particular tax problem in using either of two basic research methods.

Subject Matter Method

Suppose you want to know if the Service has ruled on whether a landlord, whose farm is being operated by a tenant on a crop-share basis, but who engages an individual to manage and supervise the operation of his farm, meets the material participation requirements for purposes of computing net earnings from self-employment.

First, decide on your main subject; in this case, you might choose the term "Earnings." You would turn to the List of Topical Headings Used, beginning on page vi. This list gives all subject matter headings preceded by a digest prefix number under which digests are arranged. You will save time by checking this list to see whether the term you have chosen is listed there and whether it is cross-referenced to another heading.

Scanning that list, you will find "Earnings (See: Self-employment tax)." You will notice the index heading "120. Self-employment tax." Next find the digests under "Self-employment tax" by following the alphabetical topical headings at the top of the pages or the digest number at the bottom of the pages in the digest section of the book, beginning after page 31. The digest pages are not numbered.

Each digest is preceded by a digest number, and then by descriptive key words that further identify the issue. Under the heading "Self-employment tax" you will find all the digests starting 120.—; you will also find that the word "Farmers" is the first key word for a group of digests. By scanning the descriptive key words in this group, you can select the relevant digest (explanation has been added):

Explanation	Digest
1. Digest Number	120.55
2. Digest of Ruling	**Farmers; share-farming arrangements; material participation** Where a landlord of a farm engaged an individual to manage and supervise the operation of his farm, paid a significant part of the costs of production and retained the right to approve crop and management plans, the manager's services are considered the landlord's and farm rental income received by the landlord is considered in computing net earnings from self-employment.
3. Code & Reg. Citation	§1.1402(a)–1. (Sec. 1402, '54 Code.)
4. Revenue Ruling & Bulletin Citation	Rev. Rul. 64–32, 1964–1 (Part 1) C.B. 319.

The digest will help you decide whether the Revenue Ruling deals with the problem you are researching, which it does in this case. At the end of the digest you will find a citation to the appropriate section of law and regulations and also a citation to the item and the Bulletin in which the full text of the item is published. You would then go to page 319 of Cumulative Bulletin 1964–1 (Part 1) to determine whether the facts in Rev. Rul. 64–32 are substantially the same as those in your case.

Code Section Method

Assume your problem is the same as that used in explaining the subject matter method. You know that the problem falls under section 1402 of the 1954 Code and section 1.1402(a)–1 of the Regulations.

Turn to the Finding List for the Internal Revenue Code of 1954 beginning on page 1. This list identifies Revenue Rulings or other items published in the Bulletin under a particular section of the Code and Regulations. You will find several items listed under the Code and Regulation section indicated above and each item is followed by a number that identifies the appropriate digest. For example, on page 1 of the finding list, the 24th item listed under Regulation section 1.1402(a)–1 is Rev. Rul. 64–32, 120.55.

The digest numbers at the lower left and right hand corners of facing pages in the digest section identify the first and last digests on those pages. By following the digest numbers at the bottom of the digest pages, you will find digest number 120.55 and other digests of Regulation section 1.1402(a)–1. As explained above under Subject Matter Method, you can select the relevant digests by scanning the descriptive key words.

This volume does not contain a Code section finding list for Revenue Rulings, Revenue Procedures and Supreme Court decisions issued under the 1939 Code. Items published under the 1939 Code are cited under the corresponding

provisions of the 1954 Code, and each digest of such items contains the appropriate 1939 Code and Regulations citations in addition to the corresponding 1954 Code citations.

Researching Public Laws, Committee Reports, and Treasury Decisions

If you know the number of the Public Law, you can quickly identify the Bulletin in which it is published. Under the finding list of Public Laws Published in the Bulletin, beginning on page 29, Public Laws are listed in numerical order. Each listing gives the number assigned to the original bill, its popular title (if any), the related Committee Reports published with the Public Law, and the appropriate Bulletin citations.

If you need to identify or find a Public Law (or a related Committee Report), or a Treasury Decision relating to a particular issue, you can use the Code section method. You can easily find any related Committee Reports once you have found the Public Law; the law has a footnote indicating the Bulletin pages where the Reports are reproduced.

Assume you want to refer to a Public Law or Treasury Decision of a parent in the home of a son or daughter and you know it falls under section 3121 of the 1954 Code and section 31.3121(b)(3)–1 of the Regulations. You would turn to the 1954 Code Section Finding List for Public Laws and Treasury Decisions, beginning on page 19. On page 20 you will find citations to all the Public Laws and Treasury Decisions issued under this Code and Regulation section. You can use the same method to check the 1939 Code Section Finding List.

Researching Supreme Court Decisions

All Supreme Court decisions on Federal tax matters are published in the Bulletin.

You can find Supreme Court decisions by using either the subject matter method or the Code section method. In addition, if you know the name of the case, you can also find the decision by turning to the finding list of Decisions of the Supreme Court, beginning on page 9. The decisions are listed in alphabetical order by name, followed by the Court Decision number and the digest number. Using this number, turn to the digest. The Bulletin citation is given at the end of the digest.

Miscellaneous Bulletin Items

Under the appropriate topical headings, you will find digests of miscellaneous items published in the Bulletin, such as Executive Orders, Treasury Department Orders, Delegation Orders, etc. If a Code section is involved, you will also find the item listed under the applicable Code and Regulations sections in the 1954 Code Section Finding List.

If you do not know whether an item is published in the Bulletin, turn to the finding list of Miscellaneous items, beginning on page 10. Items not shown in other finding lists are listed here, with citations to the digest number. You will find the appropriate Bulletin citation at the end of the digest of the item.

Listing of Revenue Rulings and Revenue Procedures

The finding list of Revenue Rulings and Revenue Procedures, beginning on page 10, includes the number of every Revenue Ruling and Revenue Procedure that has been published in the Bulletin for 1953–1986, that is related to this particular Service, and that has not been superseded, revoked, or declared obsolete. A citation to a digest follows each Revenue Ruling and Revenue Procedure number.

Actions on Previously Published Revenue Rulings and Revenue Procedures

The finding list of Actions on Previously Published Revenue Rulings and Revenue Procedures, beginning on page 13, shows every Revenue Ruling and Revenue Procedure that has been modified, superseded, or otherwise acted upon, and includes a citation to the Bulletin where the later ruling or procedure may be found. Before citing a Revenue Ruling or Revenue Procedure, you should check this finding list to be sure you are citing the Service's current position.

Cumulative Supplements

Cumulative supplements to this Service are issued semiannually. After you have researched the basic volume, you should check the cumulative supplement for later developments. Information on items published in the Bulletin after the cutoff date for the basic volume is presented in the same format used in the basic volume, that is, in finding lists, digests, etc.

List of Abbreviations Used

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual
Acq.—Acquiescence

B—Individual
BE—Beneficiary
BK—Bank
B.T.A.—Board of Tax Appeals

C—Individual
C.B.—Cumulative Bulletin
CFR—Code of Federal Regulations
CI—City
COOP—Cooperative
Ct.D.—Court Decision
CY—County

D—Decedent
DC—Dummy Corporation
DE—Donee
Del. Order—Delegation Order
DISC—Domestic International Sales Corporation
DR—Donor

E—Estate
EE—Employee
E.O.—Executive Order
ER—Employer
ERISA—Employee Retirement Income Security Act
EX—Executor

F—Fiduciary
FC—Foreign Country
FICA—Federal Insurance Contributions Act
FISC—Foreign International Sales Company
FPH—Foreign Personal Holding Company
F.R.—Federal Register
FUTA—Federal Unemployment Tax Act
FX—Foreign Corporation

G.C.M.—Chief Counsel's Memorandum
GE—Grantee
GP—General Partner
GR—Grantor

IC—Insurance Company
I.R.B.—Internal Revenue Bulletin

LE—Lessee
LP—Limited Partner
LR—Lessor

M—Minor

Nonacq.—Nonacquiescence

O—Organization

P—Parent Corporation
PHC—Personal Holding Company
PO—Possession of the U.S.
PR—Partner
PRS—Partnership
PTE—Prohibited Transaction Exemption
Pub.L.—Public Law

REIT—Real Estate Investment Trust
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling

S—Subsidiary
S.P.R.—Statement of Procedural Rules
Stat.—Statutes at Large

T—Target Corporation
T.C.—Tax Court
T.D.—Treasury Decision
TFE—Transferee
TFR—Transferor
T.I.R.—Technical Information Release
TP—Taxpayer
TR—Trust
TT—Trustee

U.S.C.—United States Code

X—Corporation

Y—Corporation

Z—Corporation

List of Topical Headings Used

Abatements (See: Assessments; Refunds and credits)
Account numbers (See: Identifying numbers)
2. Administration
4. Agricultural labor
Aircraft (See: Vessels)
American employer (See specific subject headings)
6. Appeals
8. Armed Forces
10. Assessments (See also: Limitation period)
12. Attorneys and agents

14. Bankruptcy and receiverships
16. Books and records

18. Casual labor
20. Citizens
Claims (See: Limitation period; Refunds and credits)
22. Closing agreements
24. Collection of tax (See also: Levy; Liens)
Compensation (See: Railroad retirement; Unemployment funds)
Compromises (See: Offers in compromise)
28. Computation of tax
Conferences (See: Appeals)
30. Contributions to States
Court decisions (See specific subject headings)
Credits (See: Contributions to States; Refunds and credits)
32. Criminal prosecutions (See also: Fraud; Suits)
34. Deficiencies
Delegation of authority (See: Administration)
Disclosure of information (See: Publicity of information)
36. Domestic services

Earnings (See: Self-employment tax)
40. Employer-employee
Employer identification number (See: Identifying numbers)
42. Employment
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Evasion of tax (See: Fraud)
Evidence (See: Criminal prosecutions; Suits)
Examination of records or returns (See: Books and records; Returns)
44. Exempt organizations
46. Extension of time

48. Family employment
50. Federal services (See also: Instrumentalities)
52. Fishing services
54. Foreign employees
60. Forms (See also: Returns)
62. Fraud (See also: Criminal prosecutions; Penalties)

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64. Government depositary

66. Homeworkers

68. Identifying numbers
72. Included-excluded services
Information (See: Publicity of information; Returns)
Inspection of records and returns (See: Books and records; Returns)
74. Instrumentalities
76. Insurance agents
Interest (See: Deficiencies; Overpayments)
78. International organizations

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82. Levy
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86. Liens
88. Limitation period

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94. Offers in compromise
96. Officers and employees of the Service
Overassessment (See: Refunds and credits)
98. Overpayments

100. Payment of tax (See also: Government depositary)

102. Penalties
Period of limitation (See: Limitation period)
Powers of attorney (See: Attorneys and agents)
Practice before the Service (See: Attorneys and agents)
104. Publicity of information

106. Railroad retirement
108. Rates of tax
110. Receipts
Records (See: Books and records)

112. Refunds and credits (See also: Limitation period)
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116. Returns (See also: Forms; Publicity of information)
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122. Share farming
States (See: Instrumentalities)
Statute of limitations (See: Limitation period)

124. Students
126. Suits (See also: Criminal prosecutions)

128. Tax conventions
Trade or business (See: Self-employment tax)
130. Transportation services

132. Unemployment funds
United States (See: Federal services; Instrumentalities)

134. Vessels

136. Wages
138. Waivers
140. Withholding

Finding Lists for Revenue Rulings, Revenue Procedures and other Items Except Public Laws, Treasury Decisions, and Tax Conventions

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Digests of Revenue Rulings, Revenue Procedures, and other items except Public Laws, Treasury Decisions, and Tax Conventions

Abatements
(See: Assessments; Refunds and credits)

Account numbers
(See: Identifying numbers)

Administration

2.1 Acting Commissioner. Effective May 1, 1973, Deputy Commissioner Raymond F. Harless is designated to serve as Acting Commissioner of Internal Revenue and to perform all functions authorized to be performed by the Commissioner of Internal Revenue.

Treas. Dept. Order 150–81, 1973–1 C.B. 846.

2.2 Advisory committees. The following advisory committees are established or reestablished:

Advisory Group to the Commissioner of Internal Revenue, 1977–2 C.B. 529.

Chief Counsel's Advisory Committee on Rules of Professional Conduct, 1975–1 C.B. 635.

Small Business Advisory Committee to the Commissioner of Internal Revenue, 1975–1 C.B. 757.

2.3 Approval of regulations. The authority delegated to the Assistant Secretary (Tax Policy) to approve regulations relating to the internal revenue laws is redelegated to the Deputy Assistant Secretary (Tax Legislation), the Tax Legislative Counsel, and the Deputy Tax Legislative Counsel. Treas. Dept. Order No. 190–1 rescinded.

Treas. Dept. Order 190–1 (Rev.), 1977–1 C.B. 591.

2.4 Assessment; limitation period; extension; authority to sign consent. Factual situations illustrate which individuals are authorized to sign consents to extend the time for the assessment of tax. §§301.6061–1, 301.6501(c)–1. (Secs. 6061, 6501; '54 Code.)

Rev. Rul. 83–41, 1983–1 C.B. 349.

2.5 Assessment; limitation period; extension; authority to sign consent. More than one executor or administrator of an estate is permitted to sign a consent to extend the time to assess tax, so long as authorized by state law. Any one director authorized by state law to act for a dissolved corporation is allowed to sign the consent. Rev. Rul. 83–41 clarified and amplified. §§301.6061–1, 301.6501(c)–1. (Secs. 6061, 6501; '54 Code.)

Rev. Rul. 84–165, 1984–47 I.R.B. 22.

2.6 Assistant Commissioner (Administration). The office of Assistant Commissioner (Administration) in the National Office has been abolished and an office of Administrative Assistant to the Commissioner has been established.

Treas. Dept. Order 150–44, 1956–2 C.B. 1368.

2.7 Assistant Commissioner (Planning). The Office of Assistant Commissioner (Planning) in the National Office has been redesignated as the Office of the Assistant to the Commissioner.

Treas. Dept. Order 150–43, 1956–2 C.B. 1367.

2.8 Assistant Secretary (Tax Policy); final determination. The authority to make final determinations on issues of tax policy is delegated to the Assistant Secretary (Tax Policy). Treas. Dept. Orders 150–41 and 170–3 superseded.

Treas. Dept. Order No. 111–2, 1981–1 C.B. 698.

2.9 Authorization to act as agent. State or local health or welfare agencies wishing to act as agents for welfare recipient/employers should work details with respect to the application for authorization with the Director of the Internal Revenue Service Center with whom the employment tax returns are filed. The Director will indicate the length of time that the agent must retain the employers' authorizations. Rev. Proc. 70–6 amplified. §31.3504–1. (Sec. 601.401, S.P.R.; Sec. 3504, '54 Code.)

Rev. Proc. 80–4, 1980–1 C.B. 581.

2.10 Chief Counsel; Alaska office. The Chief Counsel will open an office in Alaska to be known as the District Counsel, Anchorage.

Notice 85–13, 1985–31 I.R.B. 22.

2.11 Claims arising in the administration of Internal Revenue laws. Functions of the Secretary of the Treasury and the General Counsel for the Department of the Treasury have been transferred to the Commissioner of Internal Revenue and to the Chief Counsel for the Internal Revenue Service, insofar as claims arising in the administration of the revenue laws are concerned.

Treas. Dept. Order 150–60, 1964–2 C.B. 900.

2.12 Consolidation of regions. The New York and Northeast Internal Revenue Regions are consolidated and redesignated as the North Atlantic Region, effective January 4, 1965. Treas. Dept. Orders 150–58 and 150–59 amended.

Treas. Dept. Order 150–65, 1965–2 C.B. 861.

2.13 Delegations of authority. The following documents deal with delegations of authority with respect to the Revenue Service:

Del. Order—Citation—Subject

3 (Rev. 3), 1978–2 C.B. 463, Designation to act as Commissioner.

4 (Rev. 15), 1984–37 I.R.B. 12, Summonses.

5 (Rev. 10), 1982–1 C.B. 332, Emergency sucession to Commissioner.

6 (Revised) Revoked, 1960–2 C.B. 918, Acts to be performed by agents.

11 (Rev. 15), 1985–1 C.B. 423, Offers in compromise.

23 (Rev. 7), 1978–2 C.B. 468, Tort claims; Revenue Service employees' claims.

24, 1956–1 C.B. 1015, Records.

32 (Rev. 1), Revoked, 1983–2 C.B. 406.

36 (Rev. 1), Revoked, 1983–2 C.B. 407.

37 (Revised), 1957–2 C.B. 1089, Oaths and affirmations.

40 (Rev. 2), 1979–2 C.B. 481, Credits and refunds.

42 (Rev. 18), 1983–1 C.B. 529, Consents fixing period of limitations.

51 (Rev. 6), 1982–2 C.B. 745, Proofs of claim in insolvency proceedings.

57 (Rev. 6), 1983–2 C.B. 407, Notice of additional inspection of books.

58, 1958–1 C.B. 680, Supervision of Regional Commissioners.

65, 1958–2 C.B. 1093, Settlements.

66 (Rev. 10), 1980–1 C.B. 571, Settlements, protested and Tax Court Case.

67 (Rev. 15), 1981–1 C.B. 609, Commissioner's functions.

75 Revoked, 1979–2 C.B. 484, Offers in compromise.

77 (Rev. 18), 1985–1 C.B. 423, Deficiency notices.

83 (Rev. 5), 1974–2 C.B. 464, Inspection of returns; returns or copies for use in grand jury proceedings and litigation; inquiries concerning investigation of prospective jurors in Federal litigation.

86 (Rev. 5), 1976–1 C.B. 539, Inspection of returns.

96 (Rev. 6), 1982–1 C.B. 336, Application of rulings without retroactive effect.

97 (Rev. 23), 1984–52 I.R.B. 63, Closing agreements.

100 (Rev. 3), 1982–1 C.B. 338, Statistical studies and training courses.

111 (Rev. 4), 1978–2 C.B. 480, Claims under Federal Claims Collection Act of 1966.

118 (Rev. 1), Revoked, 1983–1 C.B. 530, Performance of functions under Economic Opportunity Act.

149, Revoked, 1980–1 C.B. 575, Levy on property held by third party.

152 (Rev. 1), 1980–1 C.B. 576, Collections from delinquent Internal Revenue officers and employees.

155 (Rev. 2), 1982–2 C.B. 746, Settlement recommendation letters; Department of Justice.

156 (Rev. 6), 1985–43 I.R.B. 18, Disclosure of returns and return information.

157 (Rev. 3), 1982–1 C.B. 350, Seizure and forfeiture of personal property.

160 (Rev. 3), 1982–1 C.B. 350, Termination and jeopardy assessments.

162 (Rev. 2), 1982–2 C.B. 747, Practice before the Service.

163, 1977–1 C.B. 528, Northern Mariana Islands Social Security Tax; Director of International Operations and Director Philadelphia Service Center.

165 (Rev. 3), 1981–1 C.B. 610, Appeals; Freedom of Information Act.

169 (Rev. 1), 1982–2 C.B. 747, Determinations; immunity orders.

170, 1978–2 C.B. 485, Assistant Regional Commissioner (Compliance); Midwest Region.

171 (Rev. 1), 1982–2 C.B. 747, Authority of Chief Counsel, Regional Counsels, and Regional Directors of Appeals.

179, 1979–2 C.B. 493, Appeals Coordinated Issues.

180, 1979–2 C.B. 493, Request of Customer Financial Records.

182 (Rev. 3), 1984–1 C.B. 328, Authority to execute returns.

190, 1982–1 C.B. 350, Transfer of Technical Appeals functions to Chief Counsel.

191, 1982–1 C.B. 350, Levy on property in hands of third parties.

196, 1982–2 C.B. 748, Authority to file tax liens.

197, 1982–2 C.B. 748, Director of Practice; office transferred to Internal Revenue Service.

198, 1983–1 C.B. 531, Affixing official seal; certifying authenticity of documents.

204, 1984–1 C.B. 328, Rewards for certain information.

213, 1985–46 I.R.B. 35, Authority to issue formal document requests.

2.14 Delegations of authority; collections from delinquent officers and employees. Functions relating to officers and employees of the Treasury who fail to account for and pay over any amounts collected or received in connection with the internal revenue laws are transferred to the

Commissioner. Treas. Dept. Order 150-69 revised.

Treas. Dept. Order 150-69, 1980-1 C.B. 717.

2.15 Delegations of authority; effect of Code revision. Delegations of authority which were continued in effect under the 1954 Code are amended to include any additional or revised functions created or authorized by the Code which are essential to the performance of or directly related to the functions originally delegated.

Treas. Dept. Order 150-36, 1954-2 C.B. 733.

2.16 Delinquent taxes; Office of Economic Opportunity; antipoverty program. The authority to perform functions under the Economic Opportunity Amendment Act of 1969, Pub. L. 91-177, with respect to the withholding of certain taxes by anti-poverty agencies is delegated to the Commissioner of Internal Revenue.

Treas. Dept. Order 150-71, 1971-2 C.B. 578.

2.17 Digest of public laws. A brief explanation is given of the provisions of the public laws pertaining to internal revenue matters enacted by Congress.

Rev. Rul. 213, 1953-2 C.B. 494; 1955-2 C.B. 737; 1956-2 C.B. 1128; 1957-2 C.B. 1052; 1958-3 C.B. 3; 1959-2 C.B. 641; 1960-2 C.B. 656; 1961-2 C.B. 293; 1962-3 C.B. 3; 1963-2 C.B. 693.

2.18 Director of Practice; office transferred to Treasury. The Office of the Director of Practice has been transferred from the Internal Revenue Service to the Office of the Secretary of the Treasury to be under the immediate supervision of the General Counsel.

Treas. Dept. Order 175-1, 1963-2 C.B. 731.

2.19 Distraint sale more than five miles from estate seized. The function vested in the Commissioner of Internal Revenue by section 3701(c) of the 1939 Code to authorize a distraint sale of real estate at a place more than five miles distant from the estate seized is delegated to the District Director of Internal Revenue in whose district the estate is situated.

Comm. Reorg. Order 33, 1954-2 C.B. 734.

2.20 Establishment of certain offices in the National Office. Certain offices continue as they existed prior to this order. The Appeals Division and the Corporation and Individual Tax Divisions are transferred to the Chief Counsel.

Treas. Dept. Order 150-02, 1986-19 I.R.B. 12.

2.21 Establishment of new office. There has been established in the National Office of the Internal Revenue Service, the Office of Assistant Commissioner of Internal Revenue (Planning and Research).

Treas. Dept. Order 150-46, 1958-1 C.B. 679.

2.22 Establishment of new office. There has been established in the National Office of the Internal Revenue Service the Office of Assistant Commissioner (Data Services).

Treas. Dept. Order 150-85, 1976-2 C.B. 678.

2.23 Establishment of new office; redesignation of another. There has been established in the National Office the Office of Assistant Commissioner (Data Processing) and the office of Assistant Commissioner (Operations) has been redesignated as Assistant Commissioner (Compliance).

Treas. Dept. Order 150-56, 1961-2 C.B. 544.

2.24 Establishment of two offices in the National Office. The office of Administrative Assistant to the Commissioner has been abolished. The offices of Assistant Commissioner of Internal Revenue (Administration) and Assistant to the Commissioner have been created, effective September 6, 1960.

Treas. Dept. Order 150-52, 1960-2 C.B. 917.

2.25 Fees and mileage allowances; witnesses summoned before the Service. The Revenue Service will pay witness fees and mileage allowances to witnesses who are formally summoned to appear before Service personnel for purposes of giving testimony or producing records. §301.7602-1. (Sec. 7602, '54 Code.)

Rev. Rul. 68-645, 1968-2 C.B. 599.

2.26 Informants reward; new form. A new Form 211, Public Voucher for Reqard for Original Information, has been prescribed for use by informants in applying for a reward. (Sec. 3792, '39 Code; Sec. 7623, '54 Code.)

Rev. Rul. 140, 1953-2 C.B. 470.

2.27 Inspection of returns. The functions of the Secretary of the Treasury prescribed by any Treasury Decision relating to the granting of permission to inspect returns to any agency of the Executive Branch of the U.S. Government have been delegated to the Commissioner of Internal Revenue. Such functions may be exercised by any officer or employee of the Revenue Service who is so authorized by the Commissioner.

Treas. Dept. Order 150-35 (Rev. 1), 1959-1 C.B. 767.

2.28 Internal Revenue Districts. A complete list of Internal Revenue Districts is provided, including those districts that comprise an entire state and districts within certain states.

Treas. Dept. Order 150-01, 1986-19 I.R.B. 10.

2.29 Internal Revenue Districts; Albany and Buffalo. A realignment of the boundries of the Internal Revenue Districts of Albany and Buffalo has been authorized, effective January 1, 1965. The counties, within the State of New York, designated for each district are set forth. Treas. Dept. Order 150-38 amended.

Treas. Dept. Order 150-63, 1964-2 C.B. 901.

2.30 Internal Revenue Districts; Anchorage. Effective January 1, 1961, the area comprising the State of Alaska was removed from the Internal Revenue District, Seattle. An internal revenue district to be known as Internal Revenue District, Anchorage, for the area comprising the State of Alaska, and an office of the District Director, Anchorage, were established in the San Francisco Region for all purposes authorized by the internal revenue laws.

Treas. Dept. Order 150-53, 1961-1 C.B. 859.

2.31 Internal Revenue Districts; Cincinnati and Cleveland Districts. The Columbus and Toledo Districts have been abolished. The boundaries of the Cincinnati District have been extended to include the former Columbus District; the boundaries of the Cleveland District have been extended to include the former Toledo District.

Treas. Dept. Order 150-50, 1960-1 C.B. 859.

2.32 Internal Revenue Districts; Foreign Operations; created. The Foreign Operations Internal Revenue District has been created to replace the Office of International Operations, Internal Revenue Service.

Treas. Dept. Order 150-96, 1982-1 C.B. 511.

2.33 Internal Revenue Districts; Manhattan. Effective January 1, 1960, the Internal Revenue Districts of Lower Manhattan and Upper Manhattan, and the District Directors' offices thereof, are abolished; the Internal Revenue District, Manhattan, and the office of the District Director thereof, is established.

Treas. Dept. Order 150-49, 1960-1 C.B. 859.

2.34 Internal Revenue Districts; Nevada; transfer to Las Vegas. The headquarters office of the Internal Revenue District for the State of Nevada is transferred from Reno, Nevada to Las Vegas, Nevada.

Treas. Dept Order 150-106, 1985-31 I.R.B. 24.

2.35 Internal Revenue Districts; Sacramento, San Jose, and Laguna Niguel created. The Sacramento, San Jose, and Laguna Niguel Internal Revenue Districts have been created and the Los Angeles and San Francisco Districts have been modified.

Treas. Dept. Order 150-39, 1983-1 C.B. 801.

2.36 International Operations Division established. An International Operations Division has been established in the Philadelphia Region, Baltimore District, with headquarters in Washington, D.C., to centralize international operating responsibilities. Amended by Rev. Proc. 56-18, to announce the transfer of the office from the Baltimore District to the National Office, effective May 1, 1956.

Rev. Proc. 55-2, 1955-2 C.B. 898; Rev. Proc. 56-18, 1956-1 C.B. 1043.

2.37 Issuance of immunity orders. Authority has been delegated to the Commissioner of Internal Revenue to make determinations and to issue the orders to compel the testimony of an individual under a grant of immunity in any proceeding arising under the laws administered by the Service.

Treas. Dept. Order No. 150-88, 1978-1 C.B. 598.

2.38 Liaison with Federal intelligence agencies. Review and approval of agreements and arrangements for support and assistance between Treasury agencies and the Central Intelligence Agency and other Federal intelligence agencies except the Federal Bureau of Investigation is described. Treas. Dept. Order No. 240 rescinded.

Treas. Dept. Order 240 (Rev. 1), 1978-2 C.B. 568.

2.39 Northern Mariana Islands Social Security Tax. Authority to perform functions with respect to the administration, collection and enforcement, and assessment of the Northern Mariana Islands Social Security Tax has been delegated to the Commissioner of Internal Revenue.

Treas. Dept. Order 150-86, 1977-1 C.B. 590.

2.40 Office of Industrial Economics; transferred. The functions of the Office of Industrial Economics is transferred from the Office of Assistant Secretary (Tax Policy) to the Commissioner of the Internal Revenue Service. Treas. Dept. Order 175-5 superseded and Treas. Dept. Order 111-1 recinded.

Treas. Dept. Order 150-93, 1981-2 C.B. 732.

2.41 Organization and functions of the Service. A new Statement of Organization and Functions of the Internal Revenue Service effective March 25, 1974, describes each division and branch in the National Office and in field organizations; the Statements published in 1972-2 C.B. 836, 1973-2 C.B. 503, and 1973-2 C.B. 505 are superseded.

1974-1 C.B. 440.

2.42 Panama Canal Zone, Puerto Rico, Virgin Islands. The Panama Canal Zone, Puerto Rico, and the Virgin Islands are removed from their present Districts and Regions. Administration of the Internal Revenue laws therein shall be provided by the Commissioner.

Treas. Dept. Order 150-42, 1956-2 C.B. 1367.

2.43 Political parties; appreciated property; gifts; policy statement. Policy statement concerning tax treatment of political committees and parties, contributions of appreciated property, and filing of returns.

Announcement 73-84, 1973-2 C.B. 461.

.44 Principles of tax administration. neral principles of tax administration as they ate to the functions and responsibilities of both e Internal Revenue Service and its employees e set forth.

Rev. Proc. 64–22, 1964–1 (Part 1) C.B. 689.

.45 Publication standards; revenue rul-gs and revenue procedures. The objectives and standards for, publication of revenue rul-gs and revenue procedures in the Internal Reve-e Bulletin are reviewed to reflect the reorgani-tion of the Internal Revenue Service in accord-ce with Treasury Department Order No. 0–95, effective March 21, 1982, under Delega-n Order No. 190, the establishment of the office the Associate Chief Counsel (International), d the responsibility of the Assistant Commis-oner (Support and Services) for publishing the ternal Revenue Bulletin. Rev. Proc. 78–24 Su-erseded. (Sec. 601.601, S.P.R.)

Rev. Proc. 86–15, 1986–11 I.R.B. 26.

.46 Recognition of persons employed by xpayers. The extent to which examining offi-rs and other employees of the Revenue Service ay accord recognition to persons employed by xpayers in connection with Federal tax matters d discuss matters with such persons are out-ned. Rev. Proc. 59–4 superseded. (Sec. 601.501, P.R.)

Rev. Proc. 68–29, 1968–2 C.B. 913.

.47 Redesignation of office; transfer of ivision. The Office of Assistant Commissioner Administration) is redesignated as the Office of ssistant Commissioner (Resources Manage-ent) and the Office of Assistant Commissioner Accounts, Collection, and Taxpayer Service) is edesignated as the Office of Assistant Commis-oner (Taxpayer Service and Returns Process-g); the Collection Division is transferred to the ffice of Assistant Commissioner (Compliance) nd the Disclosure Operations Division and Tax dministration Advisory Services Division are ransferred to the Office of Assistant Commission-r (Taxpayer Service and Returns Processing); ffective upon such date as the Commissioner ay determine.

Treas. Dept. Order No. 150–90, 1978–1 C.B. 98.

.48 Redesignation of office; transfer of unctions. The Office of Assistant Commissioner Data Processing) is redesignated as the Office of ssistant Commissioner (Accounts, Collection, nd Taxpayer Service); approval is given to the ransfer of functions from the Office of Assistant Commissioner (Compliance) to the Office of As-istant Commissioner (Accounts, Collection, and Taxpayer Service) of the Collection Division.

Treas. Dept. Order 150–74, 1971–2 C.B. 579.

.49 Regional and district field offices. A nodified realignment of the Internal Revenue ervice field organization has been approved by he Secretary of the Treasury. Treas. Dept. Order 150–57 revoked. Modified to redesignate Internal Revenue regions and offices of the Regional Com-missioners. Amended by Treas. Dept. Orders 150–63 and 150–65.

Treas. Dept. Order 150–58, 1963–1 C.B. 427; Treas. Dept. Order 150–59, 1964–1 (Part 1) C.B. 505.

.50 Regulations; reference to 1939 Code. Any reference in any regulation or other executive document to any provisions of the Internal Reve-nue Code of 1939 shall be deemed also to refer to the corresponding provisions of the Internal Reve-nue Code of 1954 unless inconsistent or otherwise inappropriate.

E.O. 10574, 1954–2 C.B. 732.

.51 Regulations title heading; revised. Ef-fective January 1, 1961, the regulations under both the 1939 and 1954 Codes were redesignated under the heading, "Title 26—Internal Revenue", in the Code of Federal Regulations. The regula-tions under tax conventions were transferred to subchapter G and redesignated.

1961–1 C.B. 863.

.52 Reopening closed cases. Rules are set forth governing the reopening of cases closed by district offices or service centers. Certain types of cases in which a reconsideration or taxpayer con-tact will not be considered a reopening are listed. Rev. Proc. 83–19 superseded. §301.7605–1. (Sec. 601.105, S.P.R.; Sec. 7605, '54 Code.)

Rev. Proc. 85–13, 1985–1 C.B. 514

2.53 Reorganization; Internal Revenue Service National Office; functions; Chief Counsel. The Secretary of the Treasury has reor-ganized the Internal Revenue Service National Office and transferred certain functions to Chief Counsel.

Treas. Dept. Order 150–95, 1982–1 C.B. 510.

2.54 Restrictions on telephone monitor-ing. Authority has been delegated to the Commis-sioner of Internal Revenue to represent the inter-ests of the Treasury Department before the New Jersey Board of Public Utility Commissioners in a proceeding involving review of the standards for restrictions on telephone monitoring

Treas. Dept. Order 247, 1977–1 C.B. 591.

2.55 Seal of the Treasury Department. The Commissioner and certain officers of the Rev-enue Service have been authorized to affix the Seal of the Treasury Department in the authentication of originals and copies of books, records, papers, writings, and documents of the Department, for all purposes, including the purposes authorized by 28 U.S.C. 1733(b). Treas. Dept. Order 107 (Rev. 18) superseded.

Treas. Dept. Order 107 (Rev. 19), 1975–2 C.B. 606

2.56 Secretary of the Interior; Guam and American Samoa. The authority delegated to the Secretary of the Interior to administer, collect, and enforce, in Guam and American Samoa, the taxes imposed by chapters 2 and 21 of the Code is revoked. Treas. Dept. Order 150–55 revoked.

Treas. Dept. Order 150-55 Rescission, 1975–1 C.B. 758.

2.57 Secretary of Treasury. The manner of designating certain officers to act as Secretary of the Treasury is set forth. E.O. 11680 revoked.

E.O. 11822, 1975–1 C.B. 641.

2.58 Signing proofs of claim. Authority has been delegated to certain officers of the Interna-tional Operations Division to sign proofs of claim and other documents asserting obligations in-curred in connection with bankruptcy and receiv-ership, decedent's estate, corporate dissolution, or other insolvency proceedings.

IOD Delegation 22, 1957–2 C.B. 1091.

2.59 Summons; three additional forms. Rev. Proc. 55–6 is declared obsolete because it does not reflect current law and practice with re-spect to official summons forms now in use by the Service and the Commissioner's current delega-tion of authority to issue summons. §301.7602–1. (Sec. 601.105, S.P.R.; Sec. 7602, '54 Code.)

Rev. Proc. 84–62, 1984–37 I.R.B. 35.

2.60 Title and address; Assistant Commis-sioner (International). The correct title and address is provided for the office of the new As-sistant Commissioner (International) that was es-tablished May 12, 1986, to coordinate the various international activities of the Service.

Notice 86–15, 1986–52 I.R.B. 19.

2.61 Videotex Tax Library; user charges. User charges and guidelines are set forth for infor-mation retrieval services, computer timesharing services, database vendors and brokers and others for the use of the Videotex Tax Library produced by the Service. (Sec. 601.201, S.P.R.)

Rev. Proc. 85–14, 1985–1 C.B. 515

2.62 Videotex tax library and information retrieval; user charges. User charges and guidelines are set forth for information retrieval and videotex tax library material produced by the Service. (Sec. 601.602, S.P.R.)

Rev. Proc. 86–11, 1986–8 I.R.B. 25.

Agricultural labor

4.1 Baling hay and straw; threshing grain; shelling corn; hulling almonds. Services per-formed on a farm in the employ of any person in connection with baling hay and straw, threshing grain, shelling corn, and hulling almonds consti-tute agricultural labor. Em. T. 445 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–52, 1970–1 C.B. 206.

4.2 Beekeeping. An individual raises bees and extracts, packs, and sells honey. He produces all of the honey handled by him. All of his operations are conducted at one location and are limited to the beekeeping enterprise. The location on which the enterprise is conducted is a farm, and all the services performed thereon in connection with the enterprise constitute agricultural labor. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–456, 1955–2 C.B. 418.

4.3 Canadian workers. Services performed in the U.S. by an agricultural worker brought to this country from Canada are not excepted from em-ployment. §408.208a. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–750, 1955–2 C.B. 424.

4.4 Caring for frogs and fish. Services per-formed on a farm by employees of a fishery in connection with raising, feeding, and caring for frogs and fish are agricultural labor. Em. T. 437 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–364, 1969–1 C.B. 265.

4.5 Cleaning and treating seed wheat. Services performed on a farm by employees of a contractor in cleaning and treating seed wheat which is to be planted by the grower constitutes agricultural labor. Such cleaning services as are performed on nonfarm areas, services performed in moving, maintaining and repairing the contrac-tor's equipment, and clerical, collection and other similar services relating to his business operations, do not constitute agricultural labor. (Sec. 3121, '54 Code.)

Rev. Rul. 56–14, 1956–1 C.B. 450.

4.6 Cleaning, packing, and shipping seed. Services performed by employees of a company in cleaning, packing, and shipping seeds on the farm operated by the company are agricultural labor; employer-employee voluntary withholding agree-ments are applicable with respect to remuneration paid for such services. S.S.T. 230 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1, 31.3402(a)–1, 31.3402(p)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 71–550, 1971–2 C.B. 351.

4.7 Clearing timberland for use as an or-chard. Services performed by employees of a farm owner in cutting, sawing, and hauling logs in clearing timberland for use as an orchard are not

agricultural labor. However, services performed in clearing stumps, underbrush, and debris from the land after the felled timber is removed are agricultural labor. S.S.T. 289 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–112, 1970–1 C.B. 207.

4.8 Commercial greenhouses. Guides are set forth to be used in determining whether services performed prior to 1955 in the employ of commercial greenhouse operators constitute agricultural labor for purposes of the FICA. Revised to provide new guides for determining whether wages for agricultural labor are taxable and to provide guides for determining whether such wages are subject to income tax withholding. §408.208. (Sec. 1426, '39 Code; Secs. 3121, 3401, 3402, '54 Code.)

Rev. Rul. 54–587, 1954–2 C.B. 359; Rev. Rul. 55–707, 1955–2 C.B. 420.

4.9 Cotton gin employees. Services performed for a cotton gin operator in the actual ginning of cotton as well as those essential to the operation of the cotton gin, such as supervisory, clerical, administrative, maintenance, and repair services are agricultural labor. Mim. 6056 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–207, 1970–1 C.B. 208.

4.10 Cotton ginning; delinting operations. Services performed for a commercial cotton gin operator after completion of the ginning process in connection with the further delinting of cottonseed to be sold for planting do not constitute agricultural labor. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–460, 1954–2 C.B. 353.

4.11 Dairy farms and milk processing plant. Service performed by employees of a corporation in connection with the operation of a dairy farm and milk processing plant located on the farm, including delivery, collection, clerical, and other duties are agricultural labor. Mim. 6086 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–208, 1970–1 C.B. 208.

4.12 Dehydrating and grinding alfalfa. Services performed by employees of a company engaged in the operation of an alfalfa processing plant, who dehydrate alfalfa grown on the company's farm, mix the alfalfa with other ingredients, and grind the mixture into feed for sale to livestock feeders, do not constitute agricultural labor. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 56–53, 1956–1 C.B. 456.

4.13 Dog kennel. Services performed by employees in connection with breeding, raising and caring for dogs are not agricultural labor. Em.T. 421 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–340, 1968–1 C.B. 437.

4.14 Domestic service; farm home. An individual who performs domestic services in her brothers' private home located on a farm, is subject to their direction and control in the performance of her services, may be discharged by them for failure to perform her duties, and is paid for such services by check on a quarterly basis, is an employee of her brothers for FICA purposes. Such services performed on the farm operated for profit by her brothers constitute agricultural labor. §§408.204, 408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–521, 1954–2 C.B. 355.

4.15 Domestic service; farm home. Domestic service performed by individuals in the private home of the employer which is located within the boundaries of a farm operated for profit constitutes agricultural labor for FICA purposes, regardless of the fact that the operation or maintenance of the private home is not related in any manner to the actual farm operations. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–522, 1954–2 C.B. 356.

4.16 Farm management. Farm management services performed in the employ of the owner of the adjoining farm constitute agricultural labor, even though such services are performed in major part on a farm other than that to which they relate. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–383, 1954–2 C.B. 350.

4.17 Farm management. An individual is engaged by a company to manage a farm for a fixed monthly sum and given considerable latitude in the day-to-day operation of the farm. However, he is subject to such overall instructions as the company may give from time to time. The farm manager and any employees he engages to work on the farm are employees of the company and the services performed by the farm manager are agricultural labor. (Sec. 3121, '54 Code.)

Rev. Rul. 56–440, 1956–2 C.B. 685.

4.18 Farm operator; crop purchase agreements. A partnership operating under crop purchase agreements does not qualify as the operator of a farm even though it conducts most of the necessary crop production operations. Services performed by its employees after 1950 in hauling crops to its packing plant and services performed at the plant do not constitute agricultural labor. However, services performed by its employees on farms of sellers in connection with the cultivation, harvesting, and other related services of such crops do constitute agricultural labor. §408.208. (Sec. 1426, '39 Code; Sec. 3121 '54 Code.)

Rev. Rul. 174, 1953–2 C.B. 299.

4.19 Feeding and caring for hogs. Services performed on a farm in connection with the feeding and caring for hogs, including those services performed in unloading kitchen waste from trucks and processing it for use as feed on the farm, constitute agricultural labor. However, services performed in connection with collecting and hauling such material to the farm do not constitute agricultural labor. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–486, 1954–2 C.B. 355.

4.20 Full-time basis. A full-time employee of a greenhouse, who devotes 80 percent of his time performing agricultural labor and the remaining 20 percent performing other services of an incidental nature is considered engaged to perform agricultural labor on a full-time basis. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 139, 1953–2 C.B. 297.

4.21 Harvesting and packing lettuce. Services performed for a custom operator on the farms of its customers in harvesting lettuce, including cutting the heads, constitute agricultural labor. Services performed in handling and packing the lettuce in the field, even though done immediately after it is cut, does not constitute agricultural labor. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 56–35, 1956–1 C.B. 453.

4.22 Hatchery. Services performed in the operation of a chicken hatchery on non-farm property do not constitute agricultural labor and income derived from such enterprise must be taken into consideration in computing self-employment income. §§39.481–1, 408.208. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–311, 1954–2 C.B. 266.

4.23 Hatchery. An individual operates a hatchery located on a one-acre plot of ground. Less than one percent of the chicks hatched are kept and raised by him, for the purpose of controlling the quality of the hatching eggs. All other chicks are sold within 36 hours and delivered within two weeks after hatching. *Held,* services performed in connection with the operation of the hatchery do not constitute agricultural labor. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–441, 1955–2 C.B. 417.

4.24 Hatchery. Services performed for a corporation operating a chicken hatchery in the physical processes of the hatching of poultry and those essential to the operation of the hatchery are agricultural labor for purposes of the FUTA. However, since the hatchery is not operated as a part of a poultry or other farm, the services performed by the employees are not agricultural labor for purposes of the FICA or income tax withholding. Mim. 6046 superseded. §31.3306(k)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 70–176, 1970–1 C.B. 213.

4.25 Illegal aliens. Services performed for farmers in the U.S. by alien workers who illegally entered the country are not excepted from employment for purposes of the FICA. §31.3121(b)(1)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 77–140, 1977–1 C.B. 301.

4.26 Livestock feed pens. Where a cattle feeding company holds, feeds, and fattens livestock in feed lots or feed pens, prior to the shipment of the livestock to market, for a period of 120 days, the feed pens contitute a farm, and services rendered by the company's employees, including clerical, supervisory, and administrative services, constitute agricultural labor. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–115, 1960–1 C.B. 396.

4.27 Mexican workers. Payments made to Mexican Nationals brought to the U.S. under Title V of the Agricultural Act of 1949, as amended, for services performed as cooks, waiters, and maintenance men in connection with the housing and feeding of field workers, under circumstances which do not constitute such services as agricultural labor, are subject to income tax withholding. (Secs. 3401, 6401; '54 Code.)

Rev. Rul. 56–679, 1956–2 C.B. 782.

4.28 Milk-tester; dairy herd improvement association. Services performed on a farm by a supervisor engaged by a dairy herd improvement association which consist of testing milk samples, ascertaining the amount and cost of the feed consumed, and keeping farm records constitute agricultural labor. Services performed by him off the farm relating to the business of the association and time spent in his own home and office doing laboratory work, making reports and collecting fees do not constitute agricultural labor. §§31.3121(d)–1, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 59–51, 1959–1 C.B. 257.

4.29 Mink farm. Services performed by employees on a mink farm in connection with the raising, feeding, and caring for mink, are considered agricultural labor. However, the mere maintenance of a natural enviroment is not considered to be the operation or maintenance of a farm and the services performed in connection therewith do not constitute agricultural labor. §§31.3121(g)–1,

1.3306(k)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 57–217, 1957–1 C.B. 343.

.30 Mushroom compost production. A company whose sole activity is the manufacturing and selling of mushroom compost to mushroom farmers for use in making mushroom spawn is not operating a farm and services performed by its employees are not agricultural labor for purposes of FICA, FUTA, and income tax withholding. §§31.3121(g)–1, 31.3306(c)(1)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 76–227, 1976–1 C.B. 324

4.31 Mushroom growing. Mushroom spawn is an agricultural commodity, the place in which it is grown is a farm, and services performed in connection with its production and sale are agricultural labor. §§31.3121(g)–1, 31.3306(c)(1)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 56–560, 1956–2 C.B. 698.

4.32 Mushroom growing and spawn production. The building area used by a company in its mushroom growing and mushroom spawn production operation is a farm and the related services performed by its employees are agricultural labor. Rev. Ruls. 56–560 and 57–41 superseded. §§31.3121(g)–1, 31.3306(k)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 75–484, 1975–2 C.B. 412

4.33 Mushroom growing in abandoned mine. A corporation grows mushrooms in standard mushroom houses and in an abandoned limestone mine. The surface and mine areas where operations relating to the growing of mushrooms are conducted constitute a farm, and services performed by the corporation's employees in connection with its mushroom growing operations constitute agricultural labor. §31.3121(g)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 57–41, 1957–1 C.B. 341.

4.34 Nonprofit water company; facilities for farming and domestic use. Services performed by employees of a nonprofit water company whose facilities are used primarily to furnish water to farmer members for irrigation but also to furnish water for domestic use are not agricultural labor. S.S.T. 417 superseded. §§31.3121(g)–1, 31.3306(k)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 71–293, 1971–2 C.B. 351.

4.35 Pea vining. Services performed by employees of a canning company in cutting and field loading pea vines on the farms of growers for delivery to the vining stations constitute agricultural labor. Services performed by the company's employees in the vining operation are part of the canning process and do not constitute agricultural labor. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 60–71, 1960–1 C.B. 394.

4.36 Peat; excavating and processing. Services performed by employees in excavating and processing peat for use as a soil conditioner do not constitute agricultural labor. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 60–277, 1960–2 C.B. 275.

4.37 Pilot and truck driver; aerial crop dusting. The application of FICA, FUTA, and income tax withholding is discussed with respect to services performed by a truck driver and a pilot for a firm engaged in aerial crop dusting and spraying. Rev. Rul. 54–574 superseded. §§31.3121(d)–1, 31.3121(g)–1, 31.3306(i)–1, 31.3306(k)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–583, 1968–2 C.B. 459.

4.38 Poultry raising. Services performed in carrying on a poultry business, purchasing chicks, raising them to market size, selling eggs and chickens, etc. constitute agricultural labor performed in the operation of a farm and income derived therefrom is not self-employment income. §§39.481–1, 408.208. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 54–310, 1954–2 C.B. 264.

4.39 Processing and packing walnuts. Services performed by employees of a company that buys, processes, packs, and sells walnuts are not agricultural labor. Em. T. 427 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–363, 1969–1 C.B. 264.

4.40 Processing nuts for market. A company owns and operates a farm on which it has raised nut-bearing trees. After harvesting, the nuts are delivered to the company's plant, where they undergo a number of processing operations before being packed in high vacuum containers. None of the services performed for the company in the processing of the nuts constitutes agricultural labor. §§31.3121(g)–1, 31.3306(k)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 58–581, 1958–2 C.B. 732.

4.41 Processing seed peas and beans. Services performed by employees in cleaning, packing, and storing seed peas and beans for a company whose entire investment is in equipment used in the processing of the peas and beans for sale as seeds are not agricultural labor. Em. T. 426 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–97, 1969–1 C.B. 264.

4.42 Racing and exhibiting horses. Services performed in the employ of a company that operates a stock farm in connection with racing and exhibiting horses are not agricultural labor. S.S.T. 163 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–365, 1969–1 C.B. 265.

4.43 Raising and selling albino rats. Services performed by employees in connection with the raising and selling of germ-free albino rats to be used in scientific experimentation are agricultural labor for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 75–534, 1975–2 C.B. 405.

4.44 Reforestation services. Generally, reforestation services do not constitute agricultural labor, and are not excepted from employment. However, if such services are performed on a farm in connection with the cultivation, operation, maintenance or conservation of a farm they would constitute agricultural labor. §403.208. (Sec. 1607, '39 Code; Sec. 3306, '54 Code.)
Rev. Rul. 55–607, 1955–2 C.B. 453.

4.45 Reporting wages. Farm employers, including exempt organizations, who pay wages for both agricultural labor and nonagricultural services must (1) segregate the wages for agricultural labor from other wages paid; (2) file Form 943 reporting the taxes due under the FICA with respect to wages paid to employees for agricultural labor; and (3) file Form 941 reporting the FICA taxes on, and the income tax withheld from, wages for other employment. (Secs. 3121, 3401; '54 Code.)
Rev. Rul. 56–118, 1956–1 C.B. 467.

4.46 Slaughterhouse on farm. An individual engages in the business of slaughtering, dressing, and cutting up livestock for the general public. His slaughterhouse is located on a farm which he owns and operates but he does not produce any of the livestock handled at the slaughterhouse. The services performed in connection with the custom butchering operations do not constitute agricultural labor. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–696, 1955–2 C.B. 419.

4.47 Sod. A farm operator sells to homeowners sod produced on his farm and on other farms. More than one-half of the sod he sells is produced on his own farm. Services performed by employees of the farm operator in cutting, rolling, and loading sod and in delivering the sod to the homes of customers constitute agricultural labor. §31.3121(g)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 56–348, 1956–2 C.B. 697.

4.48 Spreading lime and grinding feed. Services performed prior to 1955 in the employ of custom operators on the farms of their customers in spreading agricultural lime or in grinding feed products to be used for feeding purposes on such farms are treated as agricultural labor for SECA purposes. Services performed in the employ of such custom operators in transporting lime and equipment, repairing and maintaining equipment as well as clerical and bookkeeping services relating to such operations do not constitute agricultural labor. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 54–535, 1954–2 C.B. 266.

4.49 Tobacco-bulking plant. Services performed by an employee in a tobacco-bulking plant in connection with the fermenting, grading, and baling of cigar leaf wrapper tobacco do not constitute agricultural labor, irrespective of the source of the tobacco processed or the place where the bulking plant is located. S.S.T. 418 revoked. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 57–608, 1957–2 C.B. 638.

4.50 Wages; commodity storage receipts. Payments made to farm employees in commodity storage receipts that are immediately converted to cash are not excepted from wages under section 3121(a)(8)(A). §31.3121(a)(8)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 79–207, 1979–2 C.B. 351.

4.51 Water cress farming. Services performed by employees of a company in raising, harvesting and packing water cress, as well as transporting it to a freight terminal are agricultural labor; employer-employee voluntary agreements for withholding of income tax are permitted. S.S.T. 364 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1, 31.3402(a)–1, 31.3402(p)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)
Rev. Rul. 71–275, 1971–1 C.B. 288.

Aircraft
(See: Vessels)

American employer
(See: Employer-employee)

Appeals

6.1 Appeals Coordinated Issues; settlement or other disposition. Procedures are set forth relating to the settlement or other disposi-

tion of cases under the jurisdiction of an Appeals Office that involve issues identified as Appeals Coordinated Issues. (Sec. 601.106, S.P.R.)
Rev. Proc. 79–34, 1979–2 C.B. 498.

6.2 Appeals Division; unagreed cases; 100-percent penalty assessment. Updated procedures are set forth for appeals of 100-percent penalty assessments arising under section 6672. Rev. Proc. 61–27 and Rev. Proc. 69–26 superseded. Rev. Proc. 57–26 obsoleted. §301.6672–1. (Sec. 601.104, S.P.R.; Sec. 6672, '54 Code.)
Rev. Proc. 84–78, 1984–49 I.R.B. 6.

6.3 Conferences; recognition of persons employed by taxpayers. The extent to which examining officers and other employees of the Service may accord recognition to persons employed by taxpayers in connection with Federal tax matters and discuss tax matters with such persons is outlined. Rev. Proc. 59–4 superseded. (Sec. 601.501, S.P.R.)
Rev. Proc. 68–29, 1968–2 C.B. 913.

6.4 Moral, religious, etc. grounds. Failure or refusal to comply with tax laws on moral, religious, political, constitutional, conscientious, or similar grounds is not included within the scope of a taxpayer's right to a district conference or to appeal to the Regional Appellate Division where neither the amount of the proposed tax nor his liability for it is in dispute. (Sec. 601.105, S.P.R.)
Rev. Proc. 68–12, 1968–1 C.B. 763.

6.5 Order dismissing indictment. An order dismissing an indictment against a taxpayer in one district so that a trial may be held in another district is not appealable. §39.145–1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)
Parr, 351 U.S. 453, Ct. D. 1799, 1956–2 C.B. 988.

6.6 Penalties assessed. Procedures for appeal of assessments of certain additions to tax, additional amounts, and penalties are now found in section 601.106 of the Statement of Procedural Rules. Rev. Proc. 78–1 is obsolete. §301.7805–1. (Sec. 601.104, S.P.R.; Sec. 7805, '54 Code.)
Rev. Proc. 86–10, 1986–8 I.R.B. 25.

6.7 Returns prepared by the service. The responsibility for conducting conferences relating to employment tax returns prepared in certain unagreed cases, pursuant to section 6020(b), has been transferred from the district Audit Division to the district Collection Division or the district Collection and Taxpayer Service Division; a procedure is established for processing these cases. §301.6020–1. (Sec. 601.105, S.P.R.; Sec. 6020, '54 Code.)
Rev. Proc. 77–13, 1977–1 C.B. 570.

6.8 Unagreed audit cases; district conference. The district conference procedures with respect to unagreed cases are revised to permit district conferees to consider and accept settlement proposals by taxpayers, subject to the approval of certain designated officials, in field and office audit cases when the total amount of proposed additional tax, proposed overassessment, or claimed refund does not exceed $2,500 for any year. These procedures are effective April 1, 1974. Rev. Proc. 68–30 superseded. (Sec. 601.105, S.P.R.)
Rev. Proc. 74–4, 1974–1 C.B. 414.

6.9 Written protests. Effective March 1, 1968, the Appellate Division will consider certain unagreed cases and offers in compromise without requiring the taxpayer to file a written protest. (Sec. 601.106, S.P.R.)
Rev. Proc. 68–4, 1968–1 C.B. 746.

6.10 Written protests; penalty of perjury. The written protests that taxpayers are required to file with district directors to bring unagreed tax cases before the Appellate Division need no longer be made under oath. The protests may now be certified as true under the penalties of perjury. (Sec. 601.106, S.P.R.)
Rev. Proc. 61–36, 1961–2 C.B. 575.

Armed Forces

8.1 Allowance; Navy physician and medical personnel assigned to U.S. Capitol. Allowances paid under the Legislative Branch Appropriations Acts to the Attending Physician in the U.S. Capitol and medical personnel assigned to assist that individual, all of whom are members of the U.S. Navy who are receiving regular Navy pay, are includible in their gross incomes under section 61 and subject to income tax withholding. The allowances are excepted from employment for FUTA purposes. Whether the allowances are wages subject to FICA is to be determined by the head of the Department of Navy. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(a)–1. (Secs. 61, 3121, 3306, 3402; '54 Code.)
Rev. Rul. 78–432, 1978–2 C.B. 69.

8.2 Civilian employees. Civilian employees of the Consolidated Nonappropriated Welfare Fund operated under Army and Air Force Regulations are covered for purposes of the FICA, but not the FUTA. §§403.213, 408.213. (Secs. 1426, 1607, '39 Code; Secs. 3121, 3306, '54 Code.)
Rev. Rul. 54–556, 1954–2 C.B. 369.

8.3 Coast Guard Academy cadet. The statutory pay of a cadet of the United States Coast Guard Academy is includible in his gross income and subject to withholding of income tax in the year it is received by the Superintendent, or a subordinate, as his agent. §31.3402(a)–1. (Sec. 3402, '54 Code.)
Rev. Rul. 62–122, 1962–2 C.B. 12.

8.4 Combat death; self-employment income. The cancellation of tax liability of a serviceman killed in action while serving in a combat zone does not eliminate the income on which such liability was based. A refund of self-employment tax does not change the amount of self-employment income previously reported and does not necessitate a correction of records previously forwarded to the Social Security Administration. §29.482–1. (Sec. 482, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 55, 1953–1 C.B. 259.

8.5 Detailed to another agency; combat pay; withholding. A member of the Armed Forces serving in a combat zone while on detail to the Agency for International Development continues in an active service status during the period of his detail, is entitled to the combat pay exclusion and is excepted from income tax withholding. §31.3401(a)(1)–1. (Sec. 3401, '54 Code.)
Rev. Rul. 69–353, 1969–1 C.B. 49.

8.6 Dislocation or trailer allowances. The dislocation or trailer allowance received by a member of the uniformed services in connection with a change in duty station is includible in the gross income of the recipient under section 82 of the Code. However, such allowances are excepted from wages for purposes of income tax withholding unless the employer at the time of payment has reason to believe a corresponding deduction is not allowable under section 217. Rev. Rul. 65–158 modified. §31.3401(a)–1. (Secs. 82, 217, 3401; '54 Code.)
Rev. Rul. 75–362, 1975–2 C.B. 413

8.7 Payments during active military service. Payments made by employers to former employees who are actively serving in either the Armed Forces of the U.S. or the National Guard are not wages. S.S.T. 401 and Em. T. 432 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–136, 1969–1 C.B. 252.

8.8 Receipts; wages shown on Form W–2. The amount shown as wages in the Social Security Information portion of the Withholding Tax Statement, Form W–2, furnished a member of the uniformed services on active duty is not necessarily the same as that shown on such form for income tax withholding purposes since only the member's basic pay constitutes wages subject to the taxes withheld under the FICA. §§31.3121(i)–1, 31.6051–1. (Secs. 3121, 6051; '54 Code.)
Rev. Rul. 58–532, 1958–2 C.B. 879.

8.9 Reimbursement of loss on sale of personal residence. Reimbursements received by Federal civilian employees or members of the Armed Forces from the Government for losses sustained on the private sale of personal residences, or the excess over fair market value at the time of the sale resulting from Government purchases of the residences, as the result of the closing of a military base are "wages" for purposes of the FICA and income tax withholding, unless specifically excepted. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 82, 1034, 3121, 3122, 3401; '54 Code.)
Rev. Rul. 76–342, 1976–2 C.B. 22

8.10 Retirement pay; Career Compensation Act. Treatment of retired pay received by a member of the Armed Forces who retired for physical disability prior to October 1, 1949 and elected to receive retired pay computed under the methods provided by the Career Compensation Act of 1949. I.T. 4017 amplified. §406.207. (Sec. 1621, '39 Code; Sec. 3401, '54 Code.)
Rev. Rul. 55–88, 1955–1 C.B. 241.

8.11 Subsistence and rental allowance; Army contract surgeon. The subsistence and rental allowances paid in cash to a contract surgeon by the Department of the Army are wages subject to income tax withholding. §31.3401(a)–1. (Sec. 3401, '54 Code.)
Rev. Rul. 60–66, 1960–1 C.B. 21.

Assessments

(See also: Limitation period)

10.1 Additions to tax; deficiency notice; waiver of restrictions. A statutory notice of deficiency must be issued to assess and collect the addition to the tax for late filing by a taxpayer who has signed a waiver of restrictions on assessment and collection with respect to a deficiency but has refused to sign a waiver of the addition to tax for late filing. §§301.6211–1, 301.6213–1, 301.6659–1. (Secs. 6211, 6213, 6659; '54 Code.)
Rev. Rul. 78–20, 1978–1 C.B. 441.

10.2 Additions to tax; fraud; after taxpayer's death. The 50 percent addition to tax for fraud that was not assessed during a taxpayer's life may be assessed and collected after his death. G.C.M. 22326 superseded. §§301.6653–1, 301.6659–1. (Secs. 6653, 6659; '54 Code.)
Rev. Rul. 73–293, 1973–2 C.B. 413.

10.3 Jeopardy; factual basis. The Service must disclose the factual basis for a jeopardy assessment to a taxpayer who has filed suit for injunction against the collection of the tax and would suffer irreparable injury if the assessment were not restrained. (Sec. 7421, '54 Code.)
Shapiro, 424 U.S. 614, Ct. D. 1974, 1976–1 C.B. 399.

10.4 Jeopardy and termination; procedure and authorization. Procedures relating to the processing and authorization of termination and jeopardy assessments are set forth. Rev. Proc.

0-4 superseded. (Sec. 601.104, S.P.R.; Secs. 091, 6211, 6851, 6861, 6862, 6863, 7429, '54 Code.)
Rev. Proc. 78-12, 1978-1 C.B. 590.

10.5 Limitation period; advance payment of agreed deficiency plus interest. The Service s barred from assessing the payment of an agreed leficiency plus interest after the running of the period of limitation of assessment. However, the advance payment of the deficiency plus interest does not constitute an overpayment of tax so as to entitle the taxpayer to a refund. Rev. Rul. 74-580 distinguished. §§301.6401-1, 301.6402-1, 301.6501(a)-1. (Secs. 6401, 6402, 6501; '54 Code.)
Rev. Rul. 85-67, 1985-1 C.B. 364.

10.6 Limitation period; extension; authority to sign consent. Factual situations illustrate which individuals are authorized to sign consents to extend the time for the assessment of tax. §§301.6061-1, 301.6501(c)-1. (Secs. 6061, 6501; '54 Code.)
Rev. Rul. 83-41, 1983-1 C.B. 349.

10.7 Limitation period; extension; authority to sign consents. More than one executor or administrator of an estate is permitted to sign a consent to extend the time to assess tax, so long as authorized by state law. Any one director authorized by state law to act for a dissolved corporation is allowed to sign the consent. Rev. Rul. 83-41 clarified and amplified. §§301.6061-1, 301.6501(c)-1. (Secs. 6061, 6501; '54 Code.)
Rev. Rul. 84-165, 1984-47 I.R.B. 22.

10.8 Penalties; appeal procedures. Procedures for appeal of assessments of certain additions to tax, additional amounts, and penalties are now found in section 601.106 of the Statement of Procedural Rules. Rev. Proc. 78-1 is obsolete. §301.7805-1 (Sec. 601.104, S.P.R.; Sec. 7805, '54 Code.)
Rev. Proc. 86-10, 1986-8 I.R.B. 25.

10.9 Temporary injunction; transfer of funds from foreign branch of domestic bank. A U.S. district court has jurisdiction to issue a temporary injunction, pending service of process on a foreign corporation and an adjudication of the substantive tax issues on the merits, enjoining a domestic bank from transferring any property or rights to property held by it at any branch office within or without the U.S. for the account of a foreign corporation against which jeopardy assessments have been made. (Sec. 7402, '54 Code.)
First City National Bank, 379 U.S. 378, Ct. D. 1895, 1965-2 C.B. 457.

Attorneys and agents

12.1 Advisory committee. The Chief Counsel's Advisory Committee on Rules of Professional Conduct is established.
1975-1 C.B. 635.

12.2 Application to perform acts required of employers. Application by agents for authority to perform acts required of employers under the employment tax provisions of the Code should be made to the District Director or Director of a Service Center with whom the agent will file the returns. The application should be accompanied by Form 2678, Employer Appointment of Agent. Further, the time and manner of filing returns by agents and for correcting wage reports under the FICA are prescribed. Rev. Proc. 57-31 superseded. Amplified by Rev. Procs. 80-4 and 84-33. §31.3504-1. (Sec. 601.401, S.P.R.; Sec. 3504, '54 Code.)
Rev. Proc. 70-6, 1970-1 C.B. 420.

12.3 Application to perform acts required of employers. Applications for state or local health or welfare agencies to act as agents for welfare recipients/employers may incorporate the employers' authorization by reference. The requirement that each employer submit Form 2678 to the state or local government will not be enforced. Details with respect to the application should be worked out between the agency and the Director of the Internal Revenue Service Center with whom the employment tax returns are filed. The director will indicate the length of time that the agency must retain the employers' authorizations. Rev. Proc. 70-6 amplified. §31.3504-1. (Sec. 601.401, S.P.R.; Sec. 3504, '54 Code.)
Rev. Proc. 80-4, 1980-1 C.B. 581.

12.4 Attorney-client privilege; communications, memoranda or notes. Communications by a corporation's officers and certain other employees to the corporation's counsel to enable the corporation to seek legal advice from counsel and memoranda or notes on interviews with these employees are protected from disclosure by the attorney-client privilege. §§301.7602-1, 301.7604-1. (Secs. 7602, 7604; '54 Code.)
Upjohn Co., 449 U.S., Ct. D. 2003, 1981-1 C.B. 591.

12.5 Director of Practice; establishment of office. Miscellaneous regulations are issued establishing the office of Director of Practice for consideration of cases relating to enrollment, disbarment or disciplinary measures. The Committee on Practice and office of Attorney for the Government are abolished.
1953-1 C.B. 483.

12.6 Enrollment examination; transfer of functions. The function of administering the Special Enrollment Examination for practice by agents before the Internal Revenue Service has been transferred, effective April 28, 1966, from the Office of the Director of Practice in the Office of the General Counsel of the Treasury to the Internal Revenue Service.
Treas. Dept. Order 175-3, 1966-1 C.B. 557.

12.7 Optional method of reporting and depositing backup withholdings. An optional method is provided for an authorized transfer/paying agent to report and deposit amounts withheld for payers under the statutory provisions of backup withholding. Rev. Proc. 70-6, 83-48, and 84-24 amplified. (Sec. 601.602, S.P.R.)
Rev. Proc. 84-33, 1984-1 C.B. 502.

12.8 Power of attorney; sufficiency. A signed Form 2848, Power of Attorney, is insufficient to authorize a taxpayer's representative to sign Form 907, Agreement to Extend Period of Limitations, in the absence of that specific authorization. §301.6532-1. (Sec. 6532, '54 Code.)
Rev. Rul. 76-60, 1976-1 C.B. 387.

12.9 Practice before the Service; Circular 230; proposed amendment. A proposed amendment to Circular 230 will require continuing professional education as a condition for the maintenance of good standing for enrollment to practice before the Service.
Notice 84-12, 1984-31 I.R.B. 10.

12.10 Practice before the Service; Circular 230; proposed amendment. A proposed modification of the regulations governing practice before the Service (31 CFR Part 10) would require that those who are enrolled to practice before the Service renew their enrollment on a periodic basis. A condition of eligibility for renewal would be satisfaction of continuing education requirements.
Notice 85-10, 1985-1 C.B. 433.

12.11 Practice before the Service; interim procedures. Interim instructions and procedures for filing applications for enrollment and applications for renewal of enrollment cards and recognition to be accorded attorneys and certified public accountants by officers of the Revenue Service. These procedures implement the provisions of Treas. Dept. Circular 230 (Revised) which are effective September 12, 1966. Rev. Procs. 57-3, 58-16, and 60-2 superseded. (Sec. 601.501, S.P.R.)
Rev. Proc. 66-44, 1966-2 C.B. 1252.

12.12 Practice before the Service; revised rules. Treasury Department Circular 230 has been revised to incorporate amendments that have been made to the regulations governing the practice of attorneys, certified public accountants, enrolled agents, and enrolled actuaries before the Service through February 23, 1984.
Treas. Dept. Cir. 230 (Rev.), 1985-51 I.R.B. 6.

12.13 Self-incrimination; accountant's records; summons to attorney. A taxpayer's rights under the Fourth and Fifth Amendments are not violated by the enforcement of a summons compelling an attorney to produce an accountant's potentially incriminating records that were given to the attorney by the taxpayer. §301.7604-1. (Sec. 7604, '54 Code.)
Fisher, 425 U.S. 391, Ct. D. 1977, 1976-1 C.B. 411.

12.14 Substitute power of attorney. A substitute power of attorney executed in accordance with the terms of the original power does not destroy the rights of the original attorney or agent to represent the principal in matters before the Treasury Department unless such intent is indicated in the original power of attorney.
Rev. Rul. 54-142, 1954-1 C.B. 394.

12.15 Unenrolled preparers of returns. Procedures are set forth to prescribe the standards of conduct, the scope of authority, and the circumstances and conditions under which an individual preparer of tax returns may exercise, without enrollment, the privilege of limited practice as a taxpayer's representative before the Service. Rev. Proc. 68-20 modified and superseded. (Sec. 601.502, S.P.R.)
Rev. Proc. 81-38, 1981-2 C.B. 592.

Bankruptcy and receiverships

14.1 Audit of returns. A trustee or other fiduciary of a bankruptcy estate who is ready to close the estate may obtain an expeditious audit of any Federal tax returns filed by the fiduciary. (Sec. 601.105, S.P.R.)
Rev. Proc. 76-23, 1976-1 C.B. 264

14.2 Collection proceedings; limitation period. The filing of a proof of claim with a trustee in bankruptcy or a receiver appointed by a court within six years from the date of assessment is the commencement of collection proceedings for purposes of the statutory period of limitation. I.T. 2244 superseded. §301.6502-1. (Sec. 6502, '54 Code.)
Rev. Rul. 70-555, 1970-2 C.B. 296.

14.3 Examination of returns. Procedures are provided for the trustee (or debtor in possession) to obtain a prompt determination by the Service of any unpaid tax liability of the bankruptcy estate incurred during the administration of the estate. (Sec. 601.105, S.P.R.)
Rev. Proc. 81-17, 1981-1 C.B. 688.

14.4 Interest on taxes incurred by debtor in possession; trustee's liability. Where an arrangement proceeding under Chapter XI of the Bankruptcy Act is terminated and a petition in bankruptcy is filed before taxes become payable, a

superseding trustee is not liable for interest on taxes incurred by the debtor in possession during the arrangement proceeding. Since no interest on any of the taxes accrued beyond the period of the arrangement proceeding, no interest could accumulate on a trust fund composed of withholding and cabaret taxes incurred by the debtor in possession which did not become payable until after the arrangement proceeding was terminated. The superseding trustee is liable for penalties for failure to file timely returns. §§1.6012–3, 301.6011–1, 301.6601–1, 301.6659–1. (Secs. 6011, 6012, 6601, 6659; '54 Code.)

Nicholas, 384 U.S. 678, Ct. D. 1912, 1966–2 C.B. 511.

14.5 Non-pecuniary loss penalties and post-petition interest. Collectibility of post-petition interest and non-pecuniary loss penalties claimed against the estate of a bankrupt in proceedings under the Bankruptcy Act and in general receivership or assignment for the benefit of creditor cases. G.C.M. 21860 and Rev. Rul. 62–96 superseded. §§301.6601–1, 301.6651–1—301.6653–1, 301.6656–1—301.6658–1, 301.6672–1—301.6674–1, 301.6676–1, 301.6871(a)–2. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 68–574, 1968–2 C.B. 595.

14.6 Non-pecuniary loss penalties and post-petition interest. Non-pecuniary loss penalties and post-petition interest will not be set off against funds due a bankrupt or insolvent taxpayer or estate by the U.S. where such penalties or interest would not be collectible as a claim against the bankrupt or insolvent estate. Rev. Rul. 56–162 revoked. §§301.6601–1—301.6871(a)–2 and intermediate sections. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 71–31, 1971–1 C.B. 408.

14.7 Penalties. Federal tax penalties against the estate of a bankrupt are prohibited by section 57(j) of the Bankruptcy Act, even though the penalties constitute liens perfected before bankruptcy. §301.6321–1. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Simonson, 369 U.S. 38, Ct. D. 1867, 1962–1 C.B. 302.

14.8 Priority; levy upon assignee. A valid notice of levy served upon an assignee for the benefit of creditors, before the filing of a petition in bankruptcy but after the assigned assets were converted to cash, gave the Service constructive custody of the cash proceeds in the assignee's possession and neither the bankrupt nor the petitioner as receiver could assert a claim to the proceeds. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Phelps, 421 U.S. 330, Ct. D. 1971, 1975–1 C.B. 372.

14.9 Priority of liens. The principles of law set out in *City of New Britain* will be followed by the Revenue Service when its tax claim is asserted against the proceeds realized from the bankruptcy sale of personal property in instances where a circular priority situation develops because applicable provisions of section 67c of the Bankruptcy Act require the postponement in payment of the Federal tax lien or other statutory lien to the payment of costs of administration and wage claims. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 61–101, 1961–1 C.B. 715.

14.10 Refunds and credits. A procedure is provided for the trustee (or debtor in possession) representing the bankruptcy estate to file a claim for credit or refund for any overpayment of tax. §301.6402–2. (Sec. 601.105, S.P.R.; Sec. 6402, '54 Code.)

Rev. Proc. 81–18, 1981–1 C.B. 688.

14.11 Trustee; validity of unrecorded tax lien. A trustee in bankruptcy has the rights of a statutory "judgment creditor" and, as such, prevails over an unrecorded Federal tax lien. §301.6323–1. (Sec. 6323, '54 Code.)

Spears, 382 U.S. 266, Ct. D. 1905, 1966–1 C.B. 282.

14.12 Trustee in bankruptcy. A claim for refund of employment taxes paid erroneously by a trustee in bankruptcy in violation of the general priority provisions of the Bankruptcy Act will be considered and processed without requiring further action by the trustee or bankruptcy court. (Sec. 3770, '39 Code; Sec. 6402, '54 Code.)

Rev. Rul. 55–32, 1955–1 C.B. 557.

14.13 Trustee's liability to withhold; priority. A trustee in bankruptcy is obligated to withhold, report, and pay over income and Social Security taxes from payment of priority claims for employee's wages earned prior to, but unpaid at the time of, an employer's bankruptcy. Proofs of claim on the part of the U.S. with respect to the taxes are not required and the taxes are entitled to second priority of payment under section 64(a) of the Bankruptcy Act. §§31.3102–1, 31.3402(a)–1. (Secs. 3102, 3402, 6011; '54 Code.)

Otte, 419 U.S. 43, Ct. D. 1969, 1975–1 C.B. 329.

14.14 Withheld taxes unpaid; priority; bankrupt estates. A debtor corporation was kept in possession of its business by court order under Chapter XI of the Bankruptcy Act and did not comply with requirements that it deposit withheld taxes in a special tax account. The debtor was later adjudicated a bankrupt, and the U.S. asked the bankruptcy court to pay the amount of withheld taxes prior to payment of cost and expenses of the bankruptcy proceedings. *Held,* section 64(a)(1) of the Bankruptcy Act is an overriding statement of federal policy on priorities and provides that the first priority of payment from bankrupt estates shall be the costs and expenses of administering bankruptcy proceedings. (Sec. 7501, '54 Code.)

Randall, 401 U.S. 513, Ct. D. 1943, 1971–1 C.B. 414.

Books and records

16.1 ADP systems; guidelines. The basic requirements that the Service considers to be essential in cases where a taxpayer's records are maintained within an Automatic Data Processing System are specified. References to the ADP system include all accounting and/or financial systems that process all or part of a taxpayer's transactions, records, or data by other than manual records. Rev. Proc. 64–12 and 80–42 superseded. (Sec. 601.105, S.P.R.; Sec. 6001, '54 Code.)

Rev. Procs. 86–19, 1986–14 I.R.B. 10.

16.2 Additional inspection after closing agreement. Execution and approval of a closing agreement does not preclude an additional inspection of a taxpayer's records to determine whether fraud, malfeasance, or misrepresentation of material fact exists in connection with the execution of the agreement. G.C.M. 6894 superseded. §§301.7121–1, 301.7605–1. (Secs. 7121, 7605; '54 Code.)

Rev. Rul. 72–487, 1972–2 C.B. 645.

16.3 Data processing accounting systems; evaluation. Evaluations of data processing accounting systems and records to determine which records are to be retained, their retention period and their adequacy, are not examinations, investigations, or inspections. Such evaluations are not directly related to the determinations of tax liability for a particular taxable period. §301.7605–1. (Sec. 7605, '54 Code.)

Rev. Rul. 72–375, 1972–2 C.B. 646.

16.4 Examination; injunctive relief from enforcement of summons. The Commissioner issued summonses to an accounting firm employed by the attorneys of a taxpayer, directing the firm to produce records pertaining to the taxpayer. The attorneys sought injunctive relief from the enforcement of the summonses, claiming that the summonses were void because the records were work product in trial preparation and the production of the records would require the taxpayer to incriminate himself and deprive him of counsel. Denial of the injunction was upheld because the legal remedy provided by the Code works no injustice, suffers no constitutional invalidity, and provides full opportunity for judicial review before any coercive sanctions may be imposed. §§301.7602–1, 301.7604–1. (Secs. 7210, 7402, 7602, 7604; '54 Code.)

Reisman, 375 U.S. 440, Ct. D. 1887, 1964–1 (Part 1) C.B. 517.

16.5 Examination; judicial enforcement of summons. A District Court's finding that summonses issued by a special agent to a taxpayer's bank were "solely for the purpose of unearthing evidence of criminal conduct" was not sufficient to establish that the summonses were not issued in good faith under section 7602 and, therefore, not enforceable. §§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

LaSalle National Bank, 437 U.S. 298, Ct. D. 1994, 1978–2 C.B. 336.

16.6 Examination; judicial enforcement of summons issued former employer. A taxpayer having no significantly protectible interest in a former employer's records has no right to intervene in a proceeding to enforce summonses issued to produce the records to aid in investigation before recommendation for criminal prosecution. §§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

Donaldson, f.k.a. Sweet, 400 U.S. 517, Ct. D. 1942, 1971–1 C.B. 416.

16.7 Microfilm reproduction. Microfilm reproduction, in accordance with Rev. Proc. 75–33, of general books of account and supporting records of detail will be considered books and records within the meaning of section 6001 of the Code. I.T. 3866 revoked. §301.6001–1. (Sec. 6001, '54 Code.)

Rev. Rul. 75–265, 1975–2 C.B. 460.

16.8 Microfilm reproduction; Forms W-6 and W-7. The conditions set forth in Rev. Proc. 81–46 for the reproduction of general books of account and supporting records also govern the microfilm or microfiche reproduction of Form W-6, Individual Certificate of Exemption, and Form W-7, Certificate of Exemption—Other Than Individuals. Rev. Proc. 81–46 clarified. (Sec. 601.602, S.P.R.)

Rev. Proc. 83–6, 1983–1 C.B. 582.

16.9 Substitute employees or assistants to skilled workers. An employer, whose employee or skilled worker engages substitute employees or assistants with the implied consent of the employer, is the employer of such substitutes or assistants and must meet the requirements of withholding, filing returns, and recordkeeping with respect to each employee. S.S.T. 295 superseded. §§31.3121(d)–1, 31.3401(c)–1, 31.6001–1, 31.6051–1. (Secs. 3121, 3401, 6001, 6051; '54 Code.)

Rev. Rul. 70–447, 1970–2 C.B. 281.

16.10 Summons; dual purpose; John Doe requirements. When, pursuant to section 7602, the Service serves a summons on a known taxpayer with the dual purpose of investigating both that

xpayer's liability and unnamed parties' tax liabilities, it need not comply with the requirements r John Doe summonses un section 7609, as ng as all the information sr at is relevant to a gitimate investigation of th ummoned taxpay-. (Secs. 7602, 7609; '54 Code.)
Tiffany, 469 U.S., Ct. D. 2029, 1985–1 C.B. 386

16.11 Summons; handwriting examplar. The Service may require individuals to appear and rovide handwriting exemplars under the sumons authority conferred by section 7602. 301.7602–1. (Sec. 7602, '54 Code.)
Euge, 44 U.S. 707, Ct. D. 1999, 1980–1 C.B. 310.

16.12 Summons; "John Doe"; issued to bank. The Service was within the scope of its authority in issuing a "John Doe" summons to a bank requiring the bank to produce deposit slips that would identify the depositors of 400 deteriorated $100 bills deposited with the bank within a period of a few weeks. §§301.7601–1, 301.7602–1. (Secs. 7601, 7602; '54 Code.)
Bisceglia, 420 U.S. 141, Ct. D. 1970, 1975–1 C.B. 379.

16.13 Summons; judicial enforcement; examination of taxpayer's records. The Government need not show probable cause to suspect fraud where it seeks to obtain judicial enforcement of an order for examination of a taxpayer's records unless the taxpayer raises a substantial question that judicial enforcement of the administrative summons would be an abuse of process. This question must be predicated on more than the fact of re-examination and the running of the statute of limitations on ordinary tax liability. §§301.7604–1, 301.7605–1. (Secs. 7402, 7604, 7605; '54 Code.)
Powell, 379 U.S. 48, Ct. D. 1891, 1965–1 C.B. 547; Ryan, 379 U.S. 61, Ct. D. 1892, 1965–1 C.B. 552.

Casual labor

18.1 Loaders hired by truck driver-employees. Individuals engaged by truck driver-employees, with the express consent of their employer trucking company, to unload the company's trucks, and who were paid out of funds provided by the company, are also employees of that company, even though not regularly employed. The *Bonney Motor Express, Inc.*, decision will not be followed. §31.3121(d)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 63–115, 1963–1 C.B. 178.

18.2 Political campaign worker. Cash remuneration of less than $50 during a calendar quarter paid to a campaign worker for his services by a political candidate for election or reelection is not wages for purposes of FICA and income tax withholding. The services performed for him are not employment for purposes of FUTA. However, if the candidate forms a corporation to conduct the campaign, remuneration received from the corporation and services performed are not excepted from wages and employment. S.S.T. 312 superseded. §§31.3121(a)(7)–1, 31.3306(c)(3)–1, 31.3401(a)(4)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 72–202, 1972–1 C.B. 314.

Citizens

20.1 Coverage agreement for foreign employees; corporate merger. The resultant corporation in a statutory merger or consolidation is not required to enter into a new contract on Form 2032, Contract Coverage Under Title II of the Social Security Act, as amended, to continue the coverage for U.S. citizens employed by the foreign subsidiaries of the absorbed corporation. §31.3121(1)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 64–76, 1964–1 (Part 1) C.B. 331.

20.2 Employed abroad by domestic employer; reimbursement for moving expenses. Examples set forth the income tax withholding requirements with respect to moving expense reimbursements to U.S. citizen employees transferring to or returning from foreign countries and a portion of whose income was excludable under section 911 of the Code. §31.3401(a)(8)(A)–1. (Secs. 82, 217, 911, 3401; '54 Code.)
Rev. Rul. 75–84, 1975–1 C.B. 236.

20.3 Employee of Canadian company in U.S. Remuneration paid by a Canadian company that is not engaged in business in the U.S. and does not maintain any facility, office, or agency in the U.S. to its U.S. citizen employee, who performs all services for the company in the U.S., is wages for purposes of the FICA, FUTA, and withholding of income tax. The provisions of this Revenue Ruling, for purposes of FUTA, will not be applied with respect to wages paid before November 26, 1979. §§31.3121(b)–3, 31.3306(c)–2, 31.3401(a)–1, 301.7805–1. (Secs. 3121, 3306, 3401, 7805; '54 Code.)
Rev. Rul. 79–391, 1979–2 C.B. 352.

20.4 Employees of foreign subsidiary. Social security coverage of individuals employed by a foreign subsidiary of a domestic corporation is limited to U.S. citizens and such coverage ceases on the date an employee becomes a citizen of a foreign country. Any social security tax paid by the domestic corporation on remuneration for services performed during the period the employee was a U.S. citizen is not refundable, but amounts paid during the period he is a citizen of a foreign country may be adjusted or refunded within the prescribed statutory period. §36.3121(1)(1)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 57–576, 1957–2 C.B. 641.

20.5 Foreign service; coverage agreement of successor parent. Procedure to be followed by a domestic corporation, as successor to the assets and liabilities of a dissolved domestic corporation, to continue social security coverage of U.S. citizen employees of a foreign subsidiary of the predecessor domestic corporation prior to its dissolution. §36.3121(1)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 57–216, 1957–1 C.B. 349.

20.6 Foreign subsidiary of wholly-owned domestic corporation. Domestic corporation *A* wholly owns domestic corporation *B*; *B* wholly owns foreign subsidiary *C*; and *C* owns 55 percent of the voting stock of foreign subsidiary *D. Held*, domestic corporation *B*, rather than *A*, is eligible to enter into an agreement under the FICA to extend social security coverage to services performed by U.S. citizen employees of foreign subsidiary *D*. §36.3121(1)(1)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 60–380, 1960–2 C.B. 277.

20.7 Guam; American employer. Amounts paid by an American employer to Guamanian citizens, not otherwise citizens of the U.S., for services performed in Guam are not subject to FUTA taxes of the U.S. §31.3306(j)–1. (Sec. 3306, '54 Code.)
Rev. Rul. 74–304, 1974–1 C.B. 301.

Claims
(See: Limitation period; Refunds and credits)

Closing agreements

22.1 Additional inspection of books and records. Execution and approval of a closing agreement does not preclude an additional inspection of a taxpayer's records to determine whether fraud, malfeasance, or misrepresentation of material fact exists in connection with the execution of the agreement. G.C.M. 6894 superseded.

§§301.7121–1, 301.7605–1. (Secs. 7121, 7605; '54 Code.)
Rev. Rul. 72–487, 1972–2 C.B. 645.

22.2 Effect of subsequent legislation. A valid closing agreement establishing a final determination of tax liability for a prior taxable period is not affected by subsequent retroactive legislation where such legislation is silent as to its effect on closing agreements. (Sec. 7121, '54 Code.)
Rev. Rul. 56–322, 1956–2 C.B. 963.

22.3 Implied revocation by taxpayer prior to approval by Commissioner. The taxpayer's filing of a claim for refund and the sending of a letter to the Commissioner stating that an adjustment to the taxpayer's return was erroneous, subsequent to the payment of a deficiency and the execution and submission of a closing agreement based on such adjustment but prior to the Commissioner's approval of the agreement, constitutes an implied revocation of the offer to enter into the closing agreement. G.C.M. 9552 superseded. §301.7121–1. (Sec. 7121, '54 Code.)
Rev. Rul. 73–514, 1973–2 C.B. 416.

22.4 Procedures. Procedures are set forth for closing agreements under section 7121 of the Code except those which originate in, and involve, rulings prepared by the office of the Assistant Commissioner (Technical). §301.7121–1. (Sec. 601.202, S.P.R.; Sec. 7121, '54 Code.)
Rev. Proc. 68–16, 1968–1 C.B. 779.

22.5 Revenue Agent's unintentional mistake. A Revenue Agent's unintentional mistake in failing to include certain deductions in arriving at the result upon which a closing agreement was based does not constitute a misrepresentation of a material fact upon which the agreement may be set aside. G.C.M. 7549 superseded. §301.7121–1. (Sec. 7121, '54 Code.)
Rev. Rul. 73–459, 1973–2 C.B. 415.

22.6 Ruling procedures. Revised procedures are provided for issuing rulings, determination letter, and information letters, and for entering into closing agreements on specific issues. Rev. Proc. 83–1 superseded. (Sec. 601.201, S.P.R.)
Rev. Proc. 84–1, 1984–1 C.B. 342.

22.7 Ruling procedures. Revised procedures are provided for furnishing technical advice to District Directors and Chiefs, Appeals Offices. Taxpayer's rights, when such advice has been requested, are also set forth. Rev. Proc. 83–2 superseded. (Sec. 601.105, S.P.R.)
Rev. Proc. 84–2, 1984–1 C.B. 354.

Collection of tax
(See also: Levy; Liens)

24.1 Additions; fraud; after taxpayer's death. The 50 percent addition to tax for fraud that was not assessed during a taxpayer's life may be assessed and collected after his death. G.C.M. 22326 superseded. §§301.6653–1, 301.6659–1. (Secs. 6653, 6659; '54 Code.)
Rev. Rul. 73–293, 1973–2 C.B. 413.

24.2 Additions to tax; deficiency notice; waiver of restrictions. A statutory notice of deficiency must be issued to assess and collect the addition to the tax for late filing by a taxpayer who has signed a waiver of restrictions on assessment and collection with respect to a deficiency but has refused to sign a waiver of the addition of tax for late filing. §§301.6211–1, 301.6213–1, 301.6659–1. (Secs. 6211, 6213, 6659; '54 Code.)
Rev. Rul. 78–20, 1978–1 C.B. 441.

24.3 Bankruptcy; limitation period. The filing of a proof of claim with a trustee in bankruptcy or a receiver appointed by a court within six years from the date of assessment is the commencement of collection proceedings for purposes of the statutory period of limitation. I.T. 2244 superseded. §301.6502–1. (Sec. 6502, '54 Code.)

Rev. Rul. 70–555, 1970–2 C.B. 296.

24.4 Bankruptcy; taxes withheld but unpaid. A bankrupt corporate officer's liability under section 6672 of the Code to pay over taxes withheld from employees of the bankrupt corporation is nondischargeable under section 17a(1)(e) of the Bankruptcy Act. §301.6672–1. (Sec. 6672, '54 Code.)

Sotelo, 436 U.S. 268, Ct. D. 1992, 1978–1 C.B. 441.

24.5 Banks; insolvent; immunity termination. An insolvent bank's immunity from the collection of tax is terminated if depositors and general creditors are on a parity and all of the general creditors have not been paid but all of the depositors have been paid in full without recourse. G.C.M. 22985 superseded. §301.7507–9. (Sec. 7507, '54 Code.)

Rev. Rul. 73–294, 1973–2 C.B. 422.

24.6 FICA; parent and subsidiary corporations; prior years; guidelines. Guidelines are set forth for the collection of the taxes imposed by the FICA for a prior year in cases involving a parent and its subsidiary corporations where the wage limitation of section 3121(a)(1) of the Code was exceeded in such prior year with respect to a particular employee who performed substantial services for more than one of the corporations although paid only by the parent. §§31.3101–1, 31.3111–1, 31.3121(a)–1, 31.6413(c)–1. (Sec. 601.104, S.P.R.; Secs. 3101, 3111, 3121, 6413 '54 Code.)

Rev. Proc. 74–16, 1974–1 C.B. 437.

24.7 Liability to withhold income tax; payors of interest and dividends; exemption. Payors of interest and dividends are exempted from the withholding requirements in sections 3451 through 3456, because of undue hardship, for amounts paid or accrued from July 1 through July 31, 1983.

Notice 83–13, 1983–2 C.B. 413.

24.8 Northern Mariana Islands Social Security Tax. Authority to perform functions with respect to the administration, collection and enforcement, and assessment of the Northern Mariana Islands Social Security Tax has been delegated to the Commissioner of Internal Revenue.

Treas. Dept. Order 150–86, 1977–1 C.B. 590

24.9 Penalties; failure to collect or pay; responsible person. A volunteer member of a board of trustees of a charitable organization may be liable for unpaid employment and withholding taxes in certain circumstances under section 6672. §§301.6671–1, 301.6672–1. (Secs. 6671, 6672; '54 Code.)

Rev. Rul. 84–83, 1984–1 C.B. 264.

24.10 Penalties; failure to collect or pay; stay of collection. The bond and sureties requirements of reg. 301.7101–1 will apply to situations involving stay of collection of the 100 percent penalty assessment of section 6672. §§301.6672–1, 301.7101–1. (Secs. 6672, 7101; '54 Code.)

Rev. Rul. 79–170, 1979–1 C.B. 437.

24.11 Post-petition interest and non-pecuniary loss penalties. Collectibility of post-petition interest and non-pecuniary loss penalties claimed against the estate of a bankrupt in proceedings under the Bankruptcy Act and in general receivership or assignment for the benefit of creditor cases. G.C.M. 21860 and Rev. Rul. 62–96 superseded. §§301.6601–1, 301.6651–1—301.6653–1, 301.6656–1—301.6658–1, 301.6672–1—301.6674–1, 301.6676–1, 301.6871(a)–2. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 68–574, 1968–2 C.B. 595.

24.12 Post-petition interest and non-pecuniary loss penalties. Non-pecuniary loss penalties and post-petition interest will not be set off against funds due a bankrupt or insolvent taxpayer or estate by the U.S. where such penalties or interest would not be collectible as a claim against the bankrupt or insolvent estate. Rev. Rul. 56–162 revoked. §§301.6601–1—301.6871(a)–2 and intermediate sections. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 71–31, 1971–1 C.B. 408.

24.13 Waiver; liability to withhold income tax; payors of interest and dividends; guidelines. Guidelines are provided for persons responsible for withholding tax on interest, dividends, and patronage dividends who wish to request a temporary waiver of the withholding requirements under section 3451 because of undue hardship. (Sec. 601.104, S.P.R.)

Rev. Proc. 83–20, 1983–1 C.B. 678.

Compensation

(See: Railroad retirement; Unemployment funds)

Compromises

(See: Offers in compromise)

Computation of tax

28.1 Employer of bakery products distributors. Dealers engaged by a bakery company to sell and distribute its products on a full-time basis on assigned routes and in accordance with established company procedures are employees even though they operate their own trucks. Where the method used by the company in determining the dealers' wages fails to reflect the correct amount of wages earned, the company should adopt a method of computing wages similar to that stated in Mim. 6787. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 56–129, 1956–1 C.B. 470.

28.2 June wage payment to teachers. A school which ordinarily pays its teachers semimonthly, but in June makes a single payment to each teacher which includes six semimonthly installments of wages, should compute the income tax withholding as though it were making six separate semimonthly payments. §31.3401(b)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 65–231, 1965–2 C.B. 398.

28.3 Self-employment; fractional parts of year. The maximum tax imposed on self-employment income is applicable to each of two consecutive short periods resulting from approved changes in accounting periods, even though the two periods make up only one calendar year. §1.1402(b)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 69–410, 1969–2 C.B. 167.

28.4 Withholding, cumulative wages. Procedures for the computation of withholding of income tax on the basis of cumulative wages are illustrated. §31.3402(h)(3)–1. (Sec. 601.401, S.P.R.; Sec. 3402, '54 Code.)

Rev. Proc. 78–8, 1978–1 C.B. 562.

Conferences

(See: Appeals)

Contributions to States

30.1 Credit reduction; unemployment funds. Procedure is set forth for the computation of reductions in credit against tax reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, for 1961 and subsequent years, with respect to wages paid for services performed in a State which has not restored to the U.S. Treasury amounts which were made available under Title XII of the Social Security Act or under the Temporary Unemployment Compensation Act of 1958. Rev. Proc. 65–33 superseded. Amplified by Rev. Proc. 68–5 and Rev. Proc. 69–10. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 67–9, 1967–1 C.B. 583.

30.2 Credit reduction; unemployment funds; Alabama, Nevada, and New Hampshire. Employers that claimed valid credits under sections 3302(a) and 3302(b), based on their contributions to the unemployment funds of Alabama, Nevada, and New Hampshire during 1979, are entitled to those credits and are not liable for any additional tax or interest. Rev. Proc. 80–3 obsoleted. §§31.3302(a)–1, 301.6601–1. (Sec. 601.401, S.P.R.; Secs. 3302, 3303, 3304, 3310, 6601, '54 Code.)

Rev. Proc. 81–63, 1981–2 C.B. 690.

30.3 Credit reduction; unemployment funds; Connecticut. The State credit against the Federal unemployment tax on wages reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, is reduced by 0.3 percent of the wages paid during 1974 for services performed in Connecticut. Rev. Proc. 69–10 modified. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 75–8, 1975–1 C.B. 648.

30.4 Credit reduction; unemployment funds; Delaware and Pennsylvania. The credit against federal unemployment tax for amounts paid into the unemployment funds maintained by Delaware and Pennsylvania is reduced by 0.3 percent of the wages paid during 1979 for services performed in those States. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 80–2, 1980–1 C.B. 580.

30.5 Credit reduction; unemployment funds; District of Columbia. The credit against Federal unemployment tax for amounts paid into the unemployment fund maintained by the District of Columbia is reduced by 0.3 percent of wages paid during 1977 for services performed in the District. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 78–2, 1978–1 C.B. 551.

30.6 Credit reduction; unemployment funds; 1967. For 1967 the credit against Federal unemployment tax will not be reduced. Rev. Proc. 67–9 amplified. Amplified by Rev. Proc. 69–10. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 68–5, 1968–1 C.B. 747.

30.7 Credit reduction; unemployment funds; 1968 and subsequent years. There will be no credit reduction for employers in any State, including Alaska and Michigan, for 1968 or any subsequent year. Rev. Proc. 67–9 and Rev. Proc. 68–5 amplified. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 69–10, 1969–1 C.B. 401.

30.8 Credit reduction; unemployment funds; Rhode Island. The State credit against the Federal unemployment tax on wages reportable on Form 940, Employer's Annual Federal Un-

nployment Tax Return, is reduced by 0.3 per-nt of the wages paid during 1978 for services erformed in Rhode Island. §31.3302(c)-1. ecs. 601.602, S.P.R.; Sec. 3302, '54 Code.)
Rev. Proc. 79-11, 1979-1 C.B. 492.

0.9 Credits; State bank converted to national bank. Where a State bank is converted to a national bank pursuant to section 35, title 2, U.S. Code, the national bank is considered the ame employer and taxpayer as the State bank for nployment tax purposes, including the filing of eturns and the credit for contributions made by e State bank to State unemployment funds. .S.T. 188 distinguished. §§31.3121(d)-2, 1.3301-1, 31.3302(a)-1, 31.3401(d)-1. (Secs. 121, 3301, 3302, 3401; '54 Code.)
Rev. Rul. 68-63, 1968-1 C.B. 439.

0.10 Credits; successor employer in erger or consolidation. Where a statutory erger or consolidation takes place prior to the xpiration of the first twenty weeks of a calendar ear, the resultant corporation is subject to the UTA tax with respect to the premerger or pre-onsolidation employment of individuals by the bsorbed corporation and is entitled to the credits gainst such tax for contributions to State unem-loyment funds made by the absorbed corpora-ion. The resultant corporation is also the same mployer as the absorbed corporation for purpos-s of the FICA taxes and the withholding of in-ome tax. §§31.3121(d)-2, 31.3301-1, 1.3302(a)-1, 31.3401(d)-1 (Secs. 3121, 3301, 3302, 3401; '54 Code.)
Rev. Rul. 62-60, 1962-1 C.B. 186.

30.11 Credits; voluntary payments to State fund. A State law permits employers to make voluntary contributions to the State's unemployment compensation fund in addition to the required contributions. Such voluntary contributions cannot be taken as a credit against the Federal unemployment tax. S.S.T. 323 superseded. §§31.3301-1, 31.3302(a)-1. (Secs. 3301, 3302, 3306; '54 Code.)
Rev. Rul. 72-185, 1972-1 C.B. 327.

30.12 Election to be subject to State unemployment compensation law. An employer, not subject to the unemployment compensation law of a State, who makes an election requiring payment of contributions to its unemployment compensation fund may credit such contributions against the FUTA tax. S.S.T. 165 superseded. §31.3302(a)-1 (Sec. 3302, '54 Code.)
Rev. Rul. 69-356, 1969-1 C.B. 270.

30.13 Exemption or employees ineligible under State act. An employer is liable for FUTA taxes with respect to wages paid to his employees even though he is exempt from the state unemployment compensation tax or his employees are ineligible for unemployment compensation benefits. §§31.3301-1, 31.3306(a)-1. (Secs. 3301, 3306; '54 Code.)
Rev. Rul. 75-87, 1975-1 C.B. 325.

30.14 Paid after due date of Federal return. If payment of contributions to a state unemployment compensation fund is made after the due date of the return, the fact that state authorities accept it as timely under state law is not controlling for FUTA purposes. (Sec. 3302, '54 Code.)
Rev. Rul. 56-618, 1956-2 C.B. 780.

30.15 Payment under protest. Payments to a state, made under protest and held in a suspense account pending the outcome of litigation, are not considered paid into the state unemployment fund until actually transferred thereto. (Sec. 3302, '54 Code.)
Rev. Rul. 56-561, 1956-2 C.B. 778.

30.16 Subsidiary; credit against tax. Subsidiary contributions paid pursuant to New York State law by an employer into the New York State unemployment fund, in addition to contributions made at a normal or reduced rate, should be taken into consideration in determining the amount of State contributions to be allowed as a credit against the employer's taxes under FUTA. Where a subsidiary rate is required by State law, the "experience rate" as called for in the annual Federal return of employers, means the total of the employer's normal or reduced rate of tax plus the subsidiary rate. §31.3302(b)-1. (Sec. 3302, '54 Code.)
Rev. Rul. 60-355, 1960-2 C.B. 278.

30.17 Unemployment funds; New Hampshire. Employers that claimed valid credits under sections 3302(a) and 3302(b), based on their contributions to the unemployment fund of New Hampshire for 1978, are entitled to those credits and are not liable for any additional tax or interest. Rev. Proc. 79-10 obsoleted. §§31.3302(a)-1, 301.6601-1. (Sec. 601.401, S.P.R.; Secs. 3302, 3303, 3304, 3310, 6601, '54 Code.)
Rev. Proc. 82-34, 1982-1 C.B. 489.

Count decisions
(See specific subject headings)

Credits
(See: Contributions to States; Refunds and credits)

Criminal prosecutions
(See also: Fraud; Suits)

32.1 Aiding revenue agent in accepting unlawful compensation. An individual accused of aiding a revenue agent in accepting unlawful compensation may properly be convicted of the offense despite the prior acquittal of the agent. (Sec. 7214, '54 Code.)
F.W. Standefer, 447 U.S.—, Ct. D. 2000, 1980-2 C.B. 379.

32.2 Appeal of court order dismissing indictment. An order dismissing an indictment against a taxpayer in one district so that a trial may be held in another district is not appealable. §39.145-1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)
Parr, 351 U.S. 453, Ct. D. 1799, 1956-2 C.B. 988.

32.3 Conspiracy to evade tax; limitation period. A conspiracy to evade taxes by concealing holdout income from pinball machines continued beyond the filing of the last return where later overt acts (furnishing false records and statements) were committed within six years of the indictment in order to conceal such income until action thereon was barred, so that prosecution was timely under the six-year limitation period. The taxpayer was not placed in double jeopardy when the Court of Appeals modified its original order for an acquittal and entered a new one directing a retrial because the jury had not been properly instructed, since the original judgment had not become final prior to the rehearing. §39.145-1. (Secs. 145, 3748, '39 Code; Secs. 6531, 7201, '54 Code.)
Forman, 361 U.S. 416, Ct. D. 1843, 1960-1 C.B. 695.

32.4 Evidence; documents illegally seized from third party. Evidence that was discovered as a result of an illegal seizure of documents from a third party, who was not before the court, may not be suppressed in a criminal trial as a Fourth Amendment violation, nor does the supervisory power of the federal courts extend to suppress such evidence.
Payner, U.S., Ct. D. 2001, 1980-2 C.B. 749.

32.5 Evidence; electronic eavesdropping in violation of Manual regulations. The Service monitored conversations between a Revenue Agent and a taxpayer later accused of offering the agent a bribe. The monitoring, while done in good faith, was in violation of Internal Revenue Manual regulations requiring specific prior authorization. Failure to comply with such regulations did not violate any provision of the Constitution or any Act of Congress, and recordings obtained during the monitoring need not be excluded from evidence.
Caceres, 440 U.S. 741, Ct. 625D 1998, 1979-1 C.B. 465.

32.6 Evidence; failure to warn of constitutional rights. Documents and oral statements obtained from a taxpayer during a routine tax investigation conducted while the taxpayer was in jail serving a state sentence could not be used as evidence in a criminal prosecution for filing false claims for refunds since the Revenue Agent conducting the investigation failed to warn the taxpayer of his constitutional rights as required by the *Miranda* decision. (Sec. 7206, '54 Code.)
Mathis, 391 U.S. 1, Ct. D. 1922, 1968-2 C.B. 903.

32.7 Evidence; remand for new trial. A case must be remanded to the District Court for the limited purpose of determining the truth of certain alleged voluntary disclosures made by corporate officers with a view to obtaining immunity prior to tax evasion prosecution where newly discovered evidence, adduced by the Government on its motion to remand, casts grave doubts as to the truth of these disclosures, tainting and rendering suspect the entire record. See 371 U.S. 341. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)
Shotwell Manufacturing Co., 355 U.S. 233, Ct. D. 1814, 1958-1 C.B. 535.

32.8 Evidence; self-incrimination. The taxpayers made disclosures under the Treasury Department's then voluntary disclosure policy (which promised immunity to taxpayers from criminal prosecution if the disclosure was made before investigation). Fraudulent disclosures were made by the taxpayers. The evidence disclosed was used at the trial in which taxpayers were convicted of willful attempted evasion of Federal income tax. *Held,* the disclosures are admissible in evidence where fraudulent. The admission of the disclosed evidence did not offend the self-incrimination clause of the Fifth Amendment. §39.145-1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)
Shotwell Manufacturing Co., 371 U.S. 341, Ct. D. 1876, 1963-1 C.B. 365.

32.9 Felony and misdemeanor statutes. Where the charge for tax evasion against a defendant was made a felony, he is not entitled to a jury instruction that he could be found guilty of a misdemeanor, even though the facts necessary to prove either charge would be the same. §39.145-1. (Secs. 145, 3616, '39 Code; Secs. 7201, 7207, 7210, '54 Code.)
Berra, 351 U.S. 131, Ct. D. 1797, 1956-1 C.B. 644.

32.10 Felony and misdemeanor statutes. A taxpayer who willfully attempted to evade Federal income taxes by filing a false return was properly convicted of a felony rather than a misdemeanor since the scope of the misdemeanor provision had been shrunk by a series of specific enactments that had the potency of implied re-

peal. §39.145–1. (Secs. 145(b), 3616(a), '39 Code; Secs. 7201, 7207, '54 Code.)

Achilli, 353 U.S. 373, Ct. D. 1810, 1957–2 C.B. 905.

32.11 Hearsay evidence as basis of indictment. A defendant may be required to stand trial for willful evasion of taxes and a conviction may be sustained even though indictment by the grand jury was based solely on the hearsay evidence of government agents. §39.145–1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Costello, 350 U.S. 359, Ct. D. 1794, 1956–1 C.B. 639.

32.12 Jury tampering. A new trial was granted to a convicted taxpayer in a tax evasion case where he discovered after the verdict that one of the jurors had been approached concerning the case and the F.B.I. had investigated the incident to see if there had been an attempted bribe. The evidence showed that the juror was subjected to extraneous influences and that the defendant was entitled to a new trial. §39.145–1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Remmer, 347 U.S. 227, Ct. D. 1766, 1954–1 C.B. 146; 350 U.S. 377, Ct. D. 1795, 1956–1 C.B. 641.

32.13 Lesser-included offense; jury charge. In a criminal prosecution for the felony offense of willfully attempting to evade and defeat income tax, the taxpayer was not entitled to a lesser-included offense charge of a misdemeanor under either section 7203 or 7207 of the Code. A lesser-included offense charge is not proper where, on the evidence presented, the factual issues to be resolved by the jury are the same as to both the lesser and greater offenses. §301.7207–1. (Secs. 7201, 7203, 7207; '54 Code.)

Sansone, 379 U.S. 886, Ct. D. 1894, 1965–2 C.B. 451.

32.14 Limitation period; extension. A timely filed complaint charging the taxpayer with willfully filing a false return is sufficient to bring about the nine-month extension of the period of limitations where it shows probable cause. (Sec. 6531, '54 Code.)

Jaben, 381 U.S. 214, Ct. D. 1902, 1965–2 C.B. 446.

32.15 Limitation period; fraudulent return. The six-year statute of limitations on a criminal prosecution for filing fraudulent returns begins to run from the date on which the return is actually filed, where an extension of time has been granted by the Commissioner, and not from the original due date of the return. (Secs. 6513, 6531; '54 Code.)

Habig, 390 U.S. 222, Ct. D. 1921, 1968–2 C.B. 589.

32.16 Meaning of "willfully." The word "willfully" as used in section 7206 means a voluntary, intentional violation of a known legal duty. (Sec. 7206, '54 Code.)

Pomponio, 429 U.S. 10, Ct. D. 1981, 1976–2 C.B. 446

32.17 Preliminary hearing; admissibility of evidence. It is not a violation of due process to deny a preliminary hearing based on the unsupported suspicions of the defendant to ascertain whether evidence taken in violation of defendant's rights before a 1952 Grand Jury was used directly or derivatively before a 1953 Grand Jury which returned indictment or to allow tainted evidence to be admitted where defendant's counsel had consciously and intentionally waived objection to its receipt. §39.145–1. (Secs. 145, 3793, '39 Code; Secs. 7201, 7206, '54 Code.)

Lawn, 355 U.S. 339, Ct. D. 1817, 1958–1 C.B. 540.

32.18 Withdrawal of plea after sentence. An indictment for tax fraud can be returned by a grand jury without any direction to do so by the Attorney General; since the evidence does not support a claim of manifest injustice, the taxpayer may not, after sentence, withdraw his plea of nolo contendere. (Sec. 3740, '39 Code; Sec. 7401, '54 Code.)

Sullivan, 348 U.S. 170, Ct. D. 1773, 1955–1 C.B. 554.

Deficiencies

34.1 Adjusted interest rate. The interest rate to be charged on underpayments or paid on overpayments after January 1976 will be determined not later than October 15, 1975, based on the adjusted prime rate charged by commercial banks during September 1975. (Sec. 6621, '54 Code.)

Rev. Rul. 75–165, 1975–1 C.B. 375.

34.2 Adjusted interest rate. The adjusted rate of interest on underpayments and overpayments has been established under section 6221(b). §301.6621–1. (Sec. 6621, '54 Code.)

Rev. Rul. 85–47, 1985–1 C.B. 367.
Rev. Rul. 85–169, 1085–44 I.R.B. 15.
Rev. Rul. 86–57, 1986–16 I.R.B. 4.
Rev. Rul. 86–146, 1986–50 I.R.B. 5.
Rev. Rul. 75–487, 1975–2 C.B. 488.
Rev. Rul. 77–411, 1977–2 C.B. 480.
Rev. Rul. 79–366, 1979–2 C.B. 402.
Rev. Rul. 81–260, 1981–2 C.B. 244.
Rev. Rul. 82–182, 1982–2 C.B. 399
Rev. Rul. 83–76, 1983–1 C.B. 354.
Rev. Rul. 83–171, 1983–2 C.B. 252.
Rev. Rul. 84–66, 1984–1 C.B. 260.
Rev. Rul. 84–159, 1984–44 I.R.B. 12.
Rev. Rul. 85–47, 1985–1 C.B. 367.
Rev. Rul. 85–169, 1085–44 I.R.B. 15.
Rev. Rul. 86–57, 1986–16 I.R.B. 4.
Rev. Rul. 86–146, 1986–50 I.R.B. 5.

34.3 Advance payment. Where an advance payment of a tax deficiency can be assessed, such assessment shall be consistent with any designation of the payment as to tax and interest which was made by the taxpayer. An advance payment which is not assessed will be treated as a deposit made in the nature of a cash bond for the payment of taxes thereafter found to be due. Under the circumstances described the running of interest is terminated on so much of a tax deficiency as is satisfied by an advance payment at the date of payment or 30 days after the filing of a waiver of restrictions on assessments and collection, whichever is the earlier. Effective with respect to advance payments made after February 24, 1964. Treatment of advance payments prior to February 24, 1964 are set forth in Rev. Proc. 63–11 which superseded Rev. Proc. 58–18. §§301.6213–1, 301.6601–1. (Sec. 601.602, S.P.R.; Secs. 6213, 6601, '54 Code.)

Rev. Proc. 63–11, 1963–1 C.B. 497; Rev. Proc. 64–13, 1964–1 (Part 1) C.B. 674.

34.4 Advance payments; interest accruals. Revised procedures are provided for taxpayers who anticipate that the Service will assert deficiencies to make remittances to stop the running of interest on the deficiencies. Rev. Proc. 82–51 superseded. §§301.6213–1, 301.6402–1, 301.6601–1, 301.6611–1, 301.6622–1. (Sec. 601.105, S.P.R.; Secs. 6213, 6402, 6601, 6611, '54 Code.)

Rev. Proc. 84–58, 1984–33 I.R.B. 9.

34.5 Bankruptcy; interest on taxes incurred by debtor in possession. Where an arrangement proceeding under Chapter XI of the Bankruptcy Act is terminated and a petition in bankruptcy is filed before taxes become payable, a superseding trustee is not liable for interest on taxes incurred by the debtor in possession during the arrangement proceeding. Since no interest on any of the taxes accrued beyond the period of the arrangement proceeding, no interest could accumulate on a trust fund composed of withholding and cabaret taxes incurred by the debtor in possession which did not become payable until after the arrangement proceeding was terminated. The superseding trustee is liable for penalties for failure to file timely returns. §§1.6012–3, 301.6011–1, 301.6601–1, 301.6659–1. (Secs. 6011, 6012, 6601, 6659; '54 Code.)

Nicholas, 384 U.S. 678, Ct. D. 1912, 1966–2 C.B. 511.

34.6 Bankruptcy; post-petition interest. Collectibility of post-petition interest and non-pecuniary loss penalties claimed against the estate of a bankrupt in proceedings under the Bankruptcy Act and in general receivership or assignment for the benefit of creditor cases. G.C.M. 21860 and Rev. Rul. 62–96 superseded. §§301.6601–1, 301.6651–1—301.6653–1, 301.6656–1—301.6658–1, 301.6672–1—301.6674–1, 301.6676–1, 301.6871(a)–2. (Secs. 6601, 6651—6653, 6556—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 68–574, 1968–2 C.B. 595.

34.7 Bankruptcy; post-petition interest. Non-pecuniary loss penalties and post-petition interest will not be set off against funds due a bankrupt or insolvent taxpayer or estate by the U.S. where such penalties or interest would not be collectible as a claim against the bankrupt or insolvent estate. Rev. Rul. 56–162 revoked. §§301.6601–1—301.6871(a)–2 and intermediate sections. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 71–31, 1971–1 C.B. 408.

34.8 Barred from assessment; offset against overpayment. Interest and penalties barred by the statute from assessment will be considered in determining the amount of an overpayment allowable on the basis of a timely filed claim for the same taxable year and the same type of tax. §301.6402–1. (Sec. 3770, '39 Code; Sec. 6402, '54 Code.)

Rev. Rul. 56–492, 1956–2 C.B. 949.

34.9 Claim; refund of FICA on employee meals and lodging; employee consents. An employer is not required to secure the written consent of its employees before filing a claim for FICA tax when the employer paid both its own and its employees' shares of FICA tax without making any deduction from the employees' pay. §§31.6205–1, 31.6402(a)–1, 31.6413(a)–2. (Secs. 119, 6205, 6402, 6413; '54 Code.)

Rev. Rul. 83–136, 1983–2 C.B. 244.

34.10 Interest; changes under 1954 Code. The provisions of the Internal Revenue Code of 1954 relating to interest on underpayment, overpayment, or extensions of time for payment of tax are explained. (Secs. 6601, 6611; '54 Code.)

Rev. Rul. 54–426, 1954–2 C.B. 39.

34.11 Interest; failure to withhold tax or file return. An employer that inadvertently fails to deduct and withhold income taxes may make an interest-free adjustment if the employer files timely supplemental returns reporting the underpayment and the employee files an income tax return and pays the tax due. Rev. Rul. 58–577 modified. §§31.3402(d)–1, 31.6205–1, 301.6601–1. (Secs. 3402, 6205, 6601; '54 Code.)

Rev. Rul. 86–10, 1986–4 I.R.B. 7.

34.12 Interest; partial payment allocation. A partial payment of assessed tax, penalty, and interest made by a cash-method taxpayer with directions as to its application will be so applied. A

partial payment, on assessed deficiencies or deficiencies mutually agreed to but unassessed, received without instructions for its application will be applied to tax, penalty, and interest in that order, starting with the earliest period. Not applicable to withheld employment taxes. Rev. Rul. 58–239 superseded. Modified by Rev. Rul.79–284. §301.6601–1. (Sec. 6601, '54 Code.)

Rev. Rul. 73–305, 1973–2 C.B. 43.

34.13 Interest; partial payment allocation. Voluntary partial payments of assessed tax, penalty, and interest will be applied as designated by the taxpayer. If no designation is made, the payments will be allocated to tax, penalty, and interest in a manner serving the best interest of the Service. Rev. Rul. 73–305 modified. §301.6601–1. (Secs. 163, 6601; '54 Code.)

Rev. Rul. 79–284, 1979–2 C.B. 83.

34.14 Interest; penalty; failure to withhold tax or file return. Interest is assessable against an employer who fails to deduct and withhold tax from the wages of an employee as required by section 3402 of the Code, even though the employee subsequently files an income tax return and satisfies his income tax liability. Modified to provide that where a delinquency penalty is to be assessed against an employer under section 6651 for failure to file the required quarterly tax return and the provisions of section 3402(d) are applicable, such penalty should be computed from the due date of the return to the date it is filed. §§31.3402(d)–1, 301.6601–1, 301.6651–1. (Secs. 3402, 6601, 6651; '54 Code.)

Rev. Rul. 58–577, 1958–2 C.B. 744; Rev. Rul. 66–113, 1966–1 C.B. 244.

34.15 Interest-free adjustment; error ascertained. For purposes of section 31.6205–1(a)(4) of the regulations, certain employment taxes underpaid in error, discovered during an audit of the employer's returns, are "ascertained" and may be paid free of interest at the time the employer signs Agreement Form 2504 or at the time he pays the tax preparatory to filing a claim, to contest the liability in court, after having exhausted all appeal rights within the Service, provided the payment is made before receiving notice and demand. §31.6205–1. (Sec. 6205, '54 Code.)

Rev. Rul. 75–464, 1975–2 C.B. 474.

34.16 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75–58, 1975–1 C.B. 374.

34.17 Interest rate; daily compounding rules. Uniform rates and procedures are set forth for computation of interest under the compounding rules established under section 6622. §301.6621–1. (Sec. 601.104, S.P.R.; Secs. 6621, 6622, '54 Code.)

Rev. Proc. 83–7, 1983–1 C.B. 583.

34.18 Notice; addition to tax; waiver of restrictions. A statutory notice of deficiency must be issued to assess and collect the addition to the tax for late filing by a taxpayer who has signed a waiver of restrictions on assessment and collection with respect to a deficiency but has refused to sign a waiver of the addition to tax for late filing. §§301.6211–1, 301.6213–1, 301.6659–1. (Secs. 6211, 6213, 6659; '54 Code.)

Rev. Rul. 78–20, 1978–1 C.B. 441.

34.19 Notice; taxpayer's last known address. The address of the taxpayer's duly authorized representative shall be regarded as the last known address of the taxpayer in cases where, subsequent to the date on which the taxpayer files a return for the taxable year, or concurrently with such filing, he files a power of attorney which authorizes the designated attorney to represent him and requests that all communications concerning his tax matters with respect thereto, or concerning a proposed deficiency in tax for that taxable year, be mailed to his attorney's address. §301.6212–2. (Sec. 601.103, S.P.R.; Sec. 6212, '54 Code.)

Rev. Proc. 61–18, 1961–2 C.B. 550.

34.20 Penalties; failure to collect or pay; stay of collection. The bond and sureties requirements of reg. 301.7101–1 will apply to situations involving stay of collection of the 100 percent penalty assessment of section 6672. §§301.6672–1, 301.7101–1. (Secs. 6672, 7101; '54 Code.)

Rev. Rul. 79–170, 1979–1 C.B. 437.

34.21 Priority; claims against an estate. Claims against a decedent's estate for funeral and administrative expenses and a family allowance required to be paid by state law have priority over the tax claims of the government for which the government has no lien. However, such tax claims are superior to claims against the estate for doctor bills from the decedent's last illness and wages due a household employee. §301.6871(a)–2. (Sec. 6871, '54 Code.)

Rev. Rul. 80–112, 1980–1 C.B. 306.

34.22 Restricted interest. Guides and instructions for the computation of restricted interest are set forth. Modified to provide that rules regarding restriction of interest are not applicable where one taxpayer's overpayment is credited, with his consent to another taxpayer's deficiency. Modified by Rev. Procs. 83–58 and 84–66. §§301.6601–1, 301.6611–1. (Sec. 601.104, S.P.R.; Sec. 3771, '39 Code; Secs. 6601, 6611, '54 Code.)

Rev. Proc. 60–17, 1960–2 C.B. 942; Rev. Proc. 65–20, 1965–2 C.B. 1003.

34.23 Restricted interest. If an overpayment is applied as credit to unpaid interest, penalty, or addition to tax for the same year and type of tax, interest is allowed from the date of overpayment to the date of assessment of the amount to which the credit is applied. Rev. Proc. 60–17 modified. §301.6611–1. (Sec. 601.104, S.P.R.; Sec. 6611, '54 Code.)

Rev. Proc. 83–58, 1983–2 C.B. 575.

34.24 Restricted interest. Amended procedure for determining the date to which interest runs on underpayments of income tax collected at source if a correction does not constitute an adjustment. Rev. Proc. 60–17 modified. §§301.6601–1. (Sec. 601.104, S.P.R.; Sec. 6601, '54 Code.)

Rev. Proc. 84–66, 1984–40 I.R.B. 10.

Delegation of authority
(See: Administration)

Disclosure of information
(See: Publicity of information)

Domestic services

36.1 Agency furnishing services of individuals. Individuals engaged by an agency other than an employment agency to perform domestic services for its clients are employees of the agency, where the agency holds itself out as being engaged in the business of furnishing domestic help, determines the individuals' remuneration, and its total business income is derived through a percentage of the remuneration received by the individuals for the performance of their services. S.S.T. 265 revoked. Clarified by Rev. Rul. 74–414. Modified by Rev. Rul. 80–365. §31.3121(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 56–502, 1956–2 C.B. 688.

36.2 Agents for welfare recipients; state and local agencies. Procedures are set forth for state and local health and welfare agencies wishing to act as agents for welfare recipients who employ individuals furnished by the agencies to provide in-home domestic services. Rev. Proc. 70–6 amplified. §31.3504–1. (Sec. 601.401, S.P.R.; Sec. 3504, '54 Code.)

Rev. Proc. 80–4, 1980–1 C.B. 581.

36.3 Babysitters. Individuals engaged to perform sitting services for the clients of a babysitting agency that receives a fixed percentage of the fee collected by the sitters are not employees of the agency with respect to remuneration received after 1974. The general rule for determining employee status set forth in Rev. Rul. 56–502 only applies to sitting services if the agency pays the sitters directly. Rev. Rul. 74–414 revoked. Rev. Rul. 56–502 modified. §§31.3121(d)–1, 31.3306(i)–1. 31.3401(c)–1, (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 80–365, 1980–2 C.B. 300.

36.4 Companion to convalescent employer. Services performed by an employee as a companion to a convalescent employer, which consist of entertaining, caring for the personal needs of, living in the home of, accompanying the convalescent on trips, and any other services necessary for his comfort or well-being, constitute domestic service in the private home of the employer. (Sec. 3121, '54 Code.)

Rev. Rul. 56–109, 1956–1 C.B. 467.

36.5 Driver of house bus. Driving and maintaining a house bus for family use constitutes domestic service for the purposes of the FICA. No liability is incurred by the employer for the withholding of income tax. §§31.3121(a)(7)–1, 31.3401(a)(3)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 58–580, 1958–2 C.B. 723.

36.6 Employer's home and place of business. An individual performs services of a domestic nature in the private nonfarm home of the employer and, in addition, services at his place of business. *Held*, the taxes imposed under the FICA should be computed on the total wages paid to the employee provided the individual meets the $50 a quarter test with respect to the domestic services. The included and excluded service rule is not applicable. (Sec. 3121, '54 Code.)

Rev. Rul. 55–386, 1955–1 C.B. 120.

36.7 Family employment. In determining whether a bona fide employment relationship exists in those cases where a member of one's family performs domestic services in his home, for FICA purposes, the existence of a contract of employment, the dependency status of the alleged employee, the work history of the alleged employee, and the details of remuneration paid, are major factors to be considered. §408.227. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 135, 1953–2 C.B. 306.

36.8 Farm home. Domestic service performed by individuals in the private home of the employer which is located within the boundaries of a farm operated for profit constitutes agricultural labor for FICA purposes, regardless of the fact that the operation or maintenance of the private home is not related in any manner to the actual farm operations. §408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–522, 1954–2 C.B. 356.

36.9 Farm home; family employment. An individual who performs domestic services in her brothers' private home located on a farm, is sub-

ject to their direction and control in the performance of her services, may be discharged by them for failure to perform her duties, and is paid for such services by check on a quarterly basis, is an employee of her brothers for FICA purposes. Such services performed on the farm operated for profit by her brothers constitute agricultural labor. §§408.204, 408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–521, 1954–2 C.B. 355.

36.10 Handyman and gardener; hospital rehabilitation program. The owner of a private residence who engages a patient of a hospital under its rehabilitation program as a handyman and gardener and who furnishes the necessary equipment, has the right to instruct the patient as to what services to perform and the manner in which to perform them, is the employer of the patient for FICA purposes. The services performed are domestic services; and the remuneration therefor is not subject to income tax withholding or the tax under the FUTA. However, remuneration for such services is includible in the patient's gross income. Distinguished by Rev. Rul. 66–288 to provide that the value of meals and lodging provided such a patient is not includible in gross income. §§31.3121(d)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–149, 1960–1 C.B. 393.

36.11 Homemaker; casework agency. Individuals selected and placed in private homes by a casework agency to perform services as homemakers, who are required to keep a daily record of hours worked, and are paid by the agency on completion of each assignment without regard to whether the agency will be reimbursed by the family for whom the services were performed, are employees. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–95, 1955–1 C.B. 480.

36.12 Housekeeper and nurse-companion for brother. A bona fide employer-employee relationship, rather than a family dependency arrangement, exists where a brother engages his sister, who is independent of his financial support, to act as housekeeper and companion and to perform minor nursing services in his home during regular hours and according to his instructions. §§408.204, 408.226, 408.227. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–572, 1954–2 C.B. 341.

36.13 Liability for tax; two persons sharing housekeeping unit. Two individuals sharing and maintaining an apartment as a single housekeeping unit constitute a single employing unit, and wages paid a domestic servant are taxable to both; however, either may file returns and pay taxes due. §408.205. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–669, 1955–2 C.B. 409.

36.14 Meals and lodging; exempt organization employees. An exempt nonprofit charitable organization that has waived its exemption from social security tax should include the fair value of living quarters and meals furnished to its employees in computing their wages. §§408.216, 408.227. (Sec. 1426(1), '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–630, 1955–2 C.B. 616.

36.15 Meals and lodging; fraternity house employees. The value of living quarters and meals furnished to nonstudents who perform housekeeping services in or about a local chapter house of an exempt college fraternity constitutes wages. §§408.218, 408.227. (Sec. 1426(b), '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–631, 1955–2 C.B. 619.

36.16 Private duty hospital attendant. A private attendant, who is not a registered nurse or a licensed practical nurse, chosen by a patient from a hospital list to provide care while hospitalized, is an employee of the patient. Such services may not be regarded as "domestic service in a private home." Modified to provide that whether such services of a domestic nature performed in a nursing home, convalescent home, or hospital may be considered domestic service in a private home depends on a complete analysis of such factors as the nature of the patient's illness, physical condition, length of confinement, and social or economic status. §§31.3121(a)(7)–1, 31.3121(d)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1, 31.3401(a)(4)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–398, 1968–2 C.B. 439; Rev. Rul. 74–388, 1974–2 C.B. 325.

36.17 Private home of deceased employer. Service performed in the home of a deceased employer that is maintained by the executor or administrator of his estate as a private home for the decedent's family during the period of administration of his estate is domestic service in a private home. S.S.T. 121 superseded. §§31.3121(a)(7)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–516, 1968–2 C.B. 425.

36.18 Private home of employer. Specific situations are illustrated for determining whether certain types of services performed in private homes of employers are domestic services. Employees performing domestic services may enter into voluntary agreements with employers for the withholding of income tax from remuneration for such services. S.S.T. 242 superseded. §§31.3121(a)(7)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1, 31.3402(p)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 71–389, 1971–2 C.B. 341.

36.19 Remuneration during illness. Amounts of $50 or more paid to a domestic servant in a private home in each calendar quarter during which she was temporarily unable to perform service due to illness constitute wages except where paid after expiration of 6 months following the last month service was actually performed. §408.227. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 244, 1953–2 C.B. 310.

36.20 Rent paid direct to landlord. Rent paid by an employer direct to a landlord or his agent for the quarters occupied by the employer's domestic servant is a payment of wages. §408.227–(h). (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–384, 1954–2 C.B. 366.

36.21 Sorority housemother; summer school. Domestic services performed by a college sorority housemother, during a university's summer school term when the sorority house is used primarily to accommodate nonmembers, are subject to FUTA and income tax withholding. Em. T. 422 superseded. §§31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3306, 3401; '54 Code.)

Rev. Rul. 68–448, 1968–2 C.B. 481.

36.22 Students; university women's club. Domestic services performed by university students for a university women's club whose membership consists of the faculty and administration members, employees of affiliated organizations, and family members of each group are not excepted from employment. S.S.T. 407 superseded. §§31.3121(b)(2)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–174, 1972–1 C.B. 315.

36.23 Wages; noncash remuneration. Noncash remuneration paid for domestic services in a private home is not wages. However, noncash remuneration paid for domestic services in a local college club or local chapter of a college fraternity or sorority is wages. §§31.3306(a)–1, 31.3306(b)–1, 31.3306(c)(2)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 80–67, 1980–1 C.B. 221.

36.24 Wages paid by third person. An individual performing domestic services in a private home is the employee of the person who directs and controls the services even though the wages for such services are provided by a third person. The employer must take into consideration any cash remuneration paid to the domestic by the third person when computing her wages. §31.3121(d)–2. (Sec. 3121, '54 Code.)

Rev. Rul. 56–605, 1956–2 C.B. 696.

Earnings

(See: Self-employment tax)

Employer-employee

40.1 Accountant; part-time; bookkeeping and related services. An individual who is engaged on a part-time basis to perform bookkeeping and related services for a corporation, performs the services on the corporation's premises at hours of his own choosing and without direction or supervision, maintains an office of his own and performs similar services for others, is not an employee. §31.3121(d)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 57–109, 1957–1 C.B. 328.

40.2 Accountant; services for public accounting firm. An independent senior accountant who performs services exclusively and on a continuing basis for a public accounting firm, subject only to its general direction and control, and who does not hold himself out to the public as being independently engaged in such activity, is the employee of the firm. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–504, 1958–2 C.B. 727.

40.3 Alien trainee; domestic U.S. corporation. Citizens of a foreign country, who are in the U.S. to be trained under a program conducted by a domestic U.S. corporation for employment in its foreign plant, are employees of the company. §§1.1441–1, 1.1441–3, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1441, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 66–76, 1966–1 C.B. 238.

40.4 American employer; employee beneficiary association in Canal Zone. A voluntary employees' beneficiary association organized without capital stock in the Canal Zone pursuant to the Canal Zone Code does not constitute an "American employer". Accordingly, services in the employ of the association performed outside the U.S. do not constitute employment. §408.203. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–644, 1955–2 C.B. 425.

40.5 American employer; foreign entertainers; "single loan-out" and "double loan-out" arrangements. Examples illustrate the tax consequences, under various sections of the Code and the U.S.—United Kingdom Income Tax Convention, of contracts between a U.S. person and a United Kingdom corporation for the performance of services by a foreign entertainer, sometimes referred to as "single loan-out" arrangements, and of contracts between a Channel Islands corporation, a United Kingdom corporation, and a U.S.

rson for the performance of services by a for-gn entertainer, sometimes referred to as "double an-out" arrangements. §§31.3401(a)(6)–1, .3402(a)–2. (Secs. 61, 482, 543, 861, 864, 871, 2, 1442, 3401, 3402; '54 Code.)

Rev. Rul. 74–330, 1974–2 C.B. 278; Rev. Rul. –331, 1974–2 C.B. 281.

0.6 Anesthetist; dental office. An anesthe-t who performs services on a full-time basis in e office of a dental surgeon administering exclu-vely to his patients is an employee of the sur-eon, notwithstanding that she furnishes her own pplies and equipment, fees for her services are sted separately on the dentist's bills, and such es constitute her sole remuneration. §31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 401; '54 Code.)

Rev. Rul. 57–381, 1957–2 C.B. 636.

0.7 Anesthetist; hospital services. An nesthetist who furnishes services to two hospitals ursuant to separate agreements, provides all such ervices either personally or with the aid of assist-nts engaged and paid by him, and maintains an ffice and holds himself out as available to furnish nesthesia services to doctors and othe hospitals, s not an employee of either hospital, but is an ndependent contractor and the employer of his ssistants. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 121, 3306, 3401; '54 Code.)

Rev. Rul. 57–380, 1957–2 C.B. 634.

0.8 Apartment and hotel managers; politi-cal subdivision of State. Individuals under contract with a political subdivision having the ight to direct and control the apartment and ho-el managers and their assistants who manage partments and hotels awaiting demolition for a ow cost housing project are employees of the sub-division. Their wages are subject to income tax withholding, but are exempt from FICA and FUTA taxes. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–459, 1972–2 C.B. 538.

0.9 Arbitrators; state arbitration panel. Individuals serving as voluntary arbitrators in la-bor disputes on the North Carolina Arbitration Panel are not employees of the State and their remuneration constitutes earnings from self-em-ployment. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–411, 1954–2 C.B. 332.

40.10 Architect. An individual engaged by a professional architectural company under oral agreements on a project-by-project basis to per-form architectural services on the company's premises, who is furnished office and desk space, secretarial and telephone service, necessary mate-rials and equipment, whose compensation is relat-ed to the difficulty and estimated time required to complete a particular job, and who is subject to the company's supervision to the extent necessary for the successful completion of a particular proj-ect, is an employee of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–412, 1974–2 C.B. 332.

40.11 Artists; services for commercial art studio. A commercial art studio engages artists to perform art services for it under a continuing relationship in connection with orders received by the studio from its clients. The studio provides equipment and materials, engages an art director to supervise the artists, requires the director and artists to perform their services personally, and by requiring their full working time, may restrict the director and artists from performing services for other persons. Accordingly, the art director and other artists are employees of the art studio. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 65–262, 1965–2 C.B. 391.

40.12 Association's executive committee members; bank directors. Executive committee members of an association who perform services in lieu of a board of directors, and bank directors who serve on various committees of a bank, are not employees; however, non-director members of bank committees are presumed to be employees. S.S.T. 310 and Mim. 6381 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–597, 1968–2 C.B. 463.

40.13 Athletic officials. Individuals engaged by an athletic association composed of colleges and universities are employees of the association where it trains them as officials of athletic contests, generally supervises them at intercollegiate contests, and pays them on a fixed-fee basis. Distinguished to provide that members of an association composed of individuals that are trained by the association and who are engaged through the association by various schools and paid by the respective schools on a per-game basis are not employees of the association. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–119, 1957–1 C.B. 331; Rev. Rul. 67–119, 1967–1 C.B. 284.

40.14 Attorney; engaged by law firm. An attorney engaged by a law firm who performs services under its direction, is furnished a place to work, and is required to work certain daily hours, is an employee of the firm. S.S.T. 271 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–324, 1968–1 C.B. 433.

40.15 Attorney; retained by corporation. An attorney engaged by a corporation and paid an annual retainer to defend it in any suit brought against it during the year is not an employee of the corporation. S.S.T. 86 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–323, 1968–1 C.B. 432.

40.16 Attorney; title searcher. An individual who works as a title searcher for a title company, which assigns him the titles to be searched, determines the price to be charged, reviews and assumes all responsibility for his work and pays him on a fee basis, is an employee regardless of the fact that the individual determines his own hours of work, is not required to do any routine office work, and is not entitled to paid vacations. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 59–49, 1959–1 C.B. 255.

40.17 Attorney-instructors at law college. Attorney-instructors and their substitutes engaged to conduct classes at a law college that requires them to teach during certain prescribed hours are employees of the college. S.S.T. 341 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–363, 1970–2 C.B. 207.

40.18 Auctioneers; temporary employment. Auctioneers engaged on a temporary basis by a firm of auctioneers which directs and controls the performance of their services are employees of the firm. S.S.T. 149 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–540, 1968–2 C.B. 455.

40.19 Auditor for state municipalities. An individual who examines state tax returns for municipalities to see that they receive their allocable shares of income tax, is not furnished office facilities nor carried on the payroll of the municipalities, and determines his own working hours and the manner in which he performs his services, is not an employee of the municipalities. He is engaged in a trade or business, and the income therefrom is considered in computing net earnings from self-employment. §§39.481–1, 406.203. (Secs. 481(a), 1621(c), '39 Code; Secs. 1402, 3401, '54 Code.)

Rev. Rul. 56–2, 1956–1 C.B. 496.

40.20 Auto repair. An individual who performs automobile repair services on a percentage basis in the repair department of an automobile sales company that retains such control over the individual's services as will assure the company a reasonable income is an employee of the company. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–370, 1955–1 C.B. 122.

40.21 Auto repair; percentage basis compensation. An individual who operates an automobile body repair shop located in space furnished by an automobile sales agency, furnishes the equipment and supplies, solicits the business other than that which comes through the agency, controls his employees, quotes prices for repair work, assumes losses from uncollectible accounts, and is paid on a percentage basis, is not an employee of the sales agency, but is engaged in a trade or business for self-employment tax purposes. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 59–261, 1959–2 C.B. 217.

40.22 Auto salespersons; used cars. An individual engaged in the wholesale purchase and sale of used automobiles between licensed automobile dealers for a company that does not retain the right to control his business operations is not an employee of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–74, 1972–1 C.B. 318.

40.23 Babysitters. Individuals performing services for the customers of an establishment engaged in a babysitter service, which furnished rules of conduct while on assignment and the nature and manner of services to be performed, are employees of the establishment. §§403.204, 405.101, 408.204. (Secs. 1426, 1607, 1621, '39 Code; Secs. 3121, 3306, 3401, '54 Code.)

Rev. Rul. 233, 1953–2 C.B. 294.

40.24 Babysitters. Individuals engaged to perform sitting services for the clients of a babysitting agency that receives a fixed percentage of the fee collected by the sitters are not employees of the agency with respect to remuneration received after 1974. The general rule for determining employee status set forth in Rev. Rul. 56–502 only applies to sitting services if the agency pays the sitters directly. Rev. Rul. 74–414 revoked. Rev. Rul. 56–502 modified. §§31.3121(d)–1, 31.3306(i)–1. 31.3401(c)–1, 31.3506–1. (Secs. 1401, 3121, 3306, 3401, 3506; '54 Code.)

Rev. Rul. 80–365, 1980–2 C.B. 300.

40.25 Babysitters; day care services. A trained baby sitter who performs day care services for a county approved organization that retains the right to determine the nature of services to be performed and the manner of performance of such services is an employee of the organization. Rev. Rul. 56–70, relating to child care services performed in an individual's home, distinguished. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–45, 1974–1 C.B. 289.

40.26 Barbers; chair rental agreements. A licensed barber who rents a chair in a barber shop

for a fixed weekly fee which includes heat, light, water and supplies, furnishes his own barbering tools, determines his own work routine, retains all fees collected without accounting to the shop owner, and the agreement may be terminated by either party at any time upon proper notice, is not an employee of the shop owner. He is engaged in a trade or business for self-employment tax purposes. §31.3121(a)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 57–110, 1957–1 C.B. 329.

40.27 Barbers; lease agreement with barbershop. Barbers performing services under a lease agreement in a barber shop that has the right to direct and control them in the performance of their services are employees of the shop. S.S.T. 236 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–488, 1970–2 C.B. 219.

40.28 Beautician in beauty salon. A beautician who rents a booth in a beauty salon for a fixed monthly fee, sells and styles wigs that she purchases herself, retains the proceeds received, is free to select her own customers and set her own work schedule, does not receive a guaranteed amount for occasional work on the salon's customers, and who is required to adhere to shop rules with respect to the cleaning of her own work area, maintaining her own tools, and furnishing and maintaining her own uniforms, is not an employee of the salon but is engaged in a trade or business for self-employment tax purposes. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–592, 1973–2 C.B. 338.

40.29 Beautician in beauty shop. A beautician is an employee when, under an agreement with a beauty salon, she "leases" a space in the salon, is required to work specified hours, furnishes daily reports to the owner of the salon reflecting the day's receipts on which the amount due her is computed, and obtains the necessary state cosmetology licenses for which she pays the necessary fees. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–591, 1973–2 C.B. 337.

40.30 Bell hop. Bell hops engaged by a hotel to render services to its guests, and whose remuneration is derived solely from tips paid directly to them by the hotel's guests and not accounted for by the bell hops to the hotel, are employees of the hotel. Such tips are includible in the gross income of the bell hops but do not constitute wages. §§31.3121(d)–1, 31.3306(a)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 57–403, 1957–2 C.B. 643.

40.31 Blind individuals; sheltered workshops; homeworkers. Blind individuals who are being trained in a charitable organization's sheltered workshop under a program of rehabilitation are not employees of the organization; blind individuals who, after completion of training, are working in the workshop either temporarily while awaiting placement in industry or permanently because they are unable to compete in industry, are employees; and blind individuals who are incapable of rehabilitation and who are furnished materials by the organization on which they may work at home whenever they please are not considered employees where they are free to sell the completed articles either to the public or to the organization. §§31.3121(d)–1, 31.3306(c)(8)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 65–165, 1965–1 C.B. 446.

40.32 Blind individuals; vending stand operators. Visually handicapped individuals who, under a license granted by a State commission for the blind, operate and manage vending stands in public buildings are independent contractors and not employees of the commission; net earnings from the operation of the stands constitute self-employment income. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–255, 1954–2 C.B. 326.

40.33 Bonding agents. Bonding agents performing services for a bonding company are not, under the facts, employees of the company; such agents are carrying on a trade or business and income therefrom must be considered in computing net earnings from self-employment. S.S.T. 345 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–582, 1968–2 C.B. 458.

40.34 Brand inspectors for stockmen's association. Full and part-time brand inspectors performing services for a stockmen's association that exercises direction and control over them are employees of the association. However, local inspectors over whom the association does not exercise such direction and control are independent contractors and not employees of the association. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–533, 1972–2 C.B. 540.

40.35 Butchers; schochtim. A schochet engaged by a poultry company to slaughter poultry in accordance with the dietary laws of the Hebrew faith is an employee of the company where he was hired through a union agreement, performs his services on the company's premises, and is required to work during prescribed hours on specified days each week. §31.3121(d)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 57–79, 1957–1 C.B. 323.

40.36 Butchers; schochtim. A schochet who performs slaughtering services at his own convenience and on his own premises for a meat market operator on a piece-work basis and who also performs similar services for persons who bring poultry to him is engaged in a trade or business for self-employment tax purposes. He is not an employee for employment tax purposes. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–80, 1957–1 C.B. 324.

40.37 Captain and crew of fishing vessel. The standards of maritime law are to be applied in determining whether the captain and crew who contract with owners of vessels to engage in fishing operations are employees of the owners for FICA and FUTA purposes. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306; '54 Code.)

W. M. Webb, Inc., 397 U.S. 179, Ct. D. 1935, 1970–1 C.B. 194.

40.38 Car shuttlers. Car shuttlers engaged by a car rental agency to shuttle cars from one location to another, who are required to deliver the car personally at the time and place specified for a designated fee, may not use the car other than for the delivery to the location specified nor transport any person or property therein, and are paid on a job basis are employees of the agency. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 66–381, 1966–2 C.B. 449.

40.39 Carnival concessionaire. A concessionaire operating a concession leased from a carnival that issues no instructions, rules, or regulations with respect to its operation is not an employee of the carnival, individuals hired by the concessionaire are his employees. S.S.T. 237 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–10, 1969–1 C.B. 255.

40.40 Carpenter and mason; contract work on hourly basis. A carpenter and mason, who obtains work as a result of his reputation and ability to operate on a small scale, furnishes most of the tools and equipment, determines his own hours of work, and is paid on an hourly rate, is not an employee of the persons for whom he performs services. He is engaged in a trade or business and his earnings should be considered in computing net earnings from self-employment. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 55–582, 1955–2 C.B. 403.

40.41 Carpenters, masons, etc.; floor layer. An experienced floor layer, who provided his own tools, engaged under an oral agreement to perform full time services at construction sites by a corporation that furnished all materials, made frequent inspection of the work, and carried workmen's compensation insurance on the worker, is an employee of the corporation. (Sec. 3121, '54 Code.)

Rev. Rul. 56–155, 1956–1 C.B. 478.

40.42 Cattle buyers for livestock company. Cattle buyers performing services for a livestock company, a clearing agency, who operate as individual traders and are registered as independent dealers are not employees of the company. Em. T. 448 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–625, 1969–2 C.B. 188.

40.43 Cemetery sexton. An individual engaged to perform services as sexton of a cemetery by the owner for a six month period and who furnishes all labor and maintains the cemetery to the satisfaction of the owner for a lump-sum payment is not an employee. Income derived from such services should be considered in computing net earnings from self-employment. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 55–328, 1955–1 C.B. 98.

40.44 Child care services in own home. Factual situations illustrate the tax treatment of amounts received and amounts expended by individuals providing child care services in their own homes. Rev. Rul. 56–70 superseded. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 61, 62, 162, 170, 1401, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 77–279, 1977–2 C.B. 12.

40.45 City inspector. An individual with technical knowledge in the engineering field who enters into an agreement with a city to perform services as a materials and equipment inspector under the supervision and direction of the city's resident engineer and is remunerated on a monthly basis is an employee of the city. The income received by him for such services does not constitute self-employment income. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)

Rev. Rul. 54–602, 1954–2 C.B. 268.

40.46 Collectors; publishing company; subscription contracts. Collectors engaged to make monthly collections on subscription contracts and to secure renewal subscriptions for a publishing company that has the right to direct and control their work are employees of the company. S.S.T. 411 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–143, 1972–1 C.B. 321.

40.47 Construction contract salespersons. Agents, engaged by a company to solicit contracts for the construction of custom-built houses, who

e furnished leads by the company, are required adhere to company rules in these contacts and ake daily reports of the activities, are paid on a mmission basis, are guaranteed minimum week- remuneration, are allowed weekly drawing ac- unts against their commissions, are permitted to termine their own hours of work, but are re- ired to spend some time as "floor time" on mpany premises, are employees of the compa- . (Sec. 3121, '54 Code.)
Rev. Rul. 56–71, 1956–1 C.B. 461.

0.48 Construction workers; house construction company. An individual and those he ages to assist him constructing houses are employees of the construction company for whom ey render services since the company has the ght to direct and control the manner of their erformance. S.S.T. 338 superseded. §31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 70–618, 1970–2 C.B. 227.

0.49 Consultants; fee or retainer basis. A ade consultant who holds his services available the general public, is remunerated on a fee or etainer basis, and is not subject to the direction nd control of his clients as to the means and ethods of operation, is not an employee of such lients for purposes of the FICA. Income derived om such activities should be considered in com- uting net earnings from self-employment. §39.481–1, 408.204. (Secs. 481, 1426, '39 Code; ecs. 1402, 3121, '54 Code.)
Rev. Rul. 54–586, 1954–2 C.B. 345.

0.50 Consultants; professor of engineering. Under described circumstances, a professor f engineering engaged on a part-time basis by a irm of consulting engineers, whose work is super- ised and checked and who does not hold himself ut to the public as an engineering consultant, is n employee of the firm. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–466, 1955–2 C.B. 397.

0.51 Consultants; retired employee training replacement. An individual who, upon eaching retirement age, is retained by her former employer as a consultant on a retainer fee basis for he purpose of training a replacement and is required, under an agreement, to devote her knowledge, skill, and working time to the company, work on its premises under the direction of a company manager, is furnished all equipment and supplies, is reimbursed for all expenses incurred on the company's behalf, is an employee of the company with respect to services performed during the term of the agreement. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–695, 1955–2 C.B. 410.

40.52 Consultants; talks given at industry group meetings. An individual is engaged by a petroleum company to give talks at various group meetings on subjects pertinent to the automotive and petroleum industries. The company arranges his itinerary and schedules, supplies him with projection equipment and films used in connection with the talks, provides an automobile for his use, and pays him a stated amount each month, plus traveling expenses. Such individual is an employee. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 56–528, 1956–2 C.B. 689.

40.53 Contract examination monitor and counselor for Federal agency. An individual who performs services as an examination monitor and counselor for a Federal agency, which has determined under the provisions of section 3122 of the FICA that the individual is not an employee but whose contract specifies the place of work, the hours of work, the general working procedures to be followed, and the right to approve substitutes and dismiss the individual is an employee of the agency, and is not engaged in a trade or business for purposes of the self-employment tax. The remuneration is subject to income tax withholding, but is not subject to the FICA or FUTA. Rev. Ruls. 147 superseded and 56–615 modified. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(c)(6)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3122, 3306, 3401; '54 Code.)
Rev. Rul. 75–343, 1975–2 C.B. 402.

40.54 Contract landmen. Contract landmen who solicit and obtain oil and gas leases for a corporation, locate landowners, explain the leases to them, negotiate for their signatures, are paid daily wages and expenses, and operate ultimately under the control of the corporation are employees of the corporation. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 65–277, 1965–2 C.B. 393.

40.55 Contract mail carrier and employees. An individual who contracts for the delivery of mail is an independent contractor and not an employee of the U.S. Government nor is he an instrumentality of the U.S. Individuals he hires are his employees and they are subject to FICA, FUTA, and income tax withholding. S.S.T. 205 superseded. §§31.3121(b)(6)–1, 31.3306(c)(6)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 69–362, 1969–1 C.B. 254.

40.56 Corporate officers. A corporation, whose officers perform functions within the scope of their duties as corporate officers and receive pay called "draws," is not entitled to relief under section 530 of the Revenue Act of 1978. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Secs. 3102, 3111, 3301, 3403; '54 Code.)
Rev. Rul. 82–83, 1982–1 C.B. 151.

40.57 Cotton buyers. Cotton buyers engaged on a commission basis to purchase cotton for a company which does not retain the right to direct and control their services are not employees of the company. S.S.T.328 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 71–42, 1971–1 C.B. 284.

40.58 Crew on company-owned fishing vessels. Fishermen performing services on company-owned schooners are employees of the company, and the shares of profit received by the fishermen are wages for FICA and FUTA purposes. S.S.T. 387 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 72–385, 1972–2 C.B. 535.

40.59 Custodian; Federal armory contract. An individual, awarded a contract to serve as a Federal armory custodian, furnishes all necessary equipment, supplies, and labor required to perform the tasks and to maintain Army standards of cleanliness and sanitation as specified in the contract, assumes responsibility for personal injury or property damage suits and his work is inspected by the commanding officer of the armory, is not an employee of the Federal Government, but is engaged in a trade or business, the income from which is includible in computing net earnings from self-employment. Distinguished by Rev. Ruls. 68–460 and 68–461. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 60–90, 1960–1 C.B. 387.

40.60 Deliverymen; owner-driver of laundry truck. The owner-driver of a truck, who built up his own pick-up and delivery laundry and dry cleaning service route, entered into an oral agreement with a laundry to occasionally serve customers referred to him by the laundry, but is not subject to supervision by the laundry, is not an employee of the laundry for FICA purposes. Income derived from his service route should be considered in computing net earnings from self-employment. §§39.481–1, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 54–555, 1954–2 C.B. 339.

40.61 Demonstrators for advertising agency; agent of State instrumentality. Individuals engaged and paid by an advertising agency on behalf of a state citrus commission to demonstrate citrus products of the state are employees of the commission, but the advertising agency is responsible for the withholding of income tax from the wages paid by it to the demonstrators. Distinguished by Rev. Rul. 58–26. §§403.204, 403.205, 403.214, 406.203, 406.205, 408.204, 408.205, 408.214. (Secs. 1426, 1607, 1621, '39 Code; Secs. 3121, 3306, 3401, '54 Code.)
Rev. Rul. 54–471, 1954–2 C.B. 348.

40.62 Dental hygienist. A dental hygienist who reports to a dentist's office on designated days of each week and gives oral prophylaxis treatments to the patients of the dentist under an agreement providing for the payment of a fee of 50 per cent of the amount charged each patient treated, whether or not collected from the patient, is an employee of the dentist. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 58–268, 1958–1 C.B. 353.

40.63 Department store concessionaire; commissions to sales clerk. A concessionaire operates a leased department in a store as an independent contractor. The store considers the sales clerks in the department to be its employees and pays a salary to them. The concessionaire, who also directs and controls the clerks, pays them commissions on their sales. The sales clerks are employees of both the store and the concessionaire. Therefore, the commissions paid the clerks are wages and the concessionaire is liable for employment taxes and income tax withholding with respect to these wages. Distinguished by Rev. Rul. 69–316. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 66–162, 1966–1 C.B. 234.

40.64 Directors as members of executive committee. Members of the board of directors who serve on an executive committee which is vested with the powers of the board while it is not in session are not employees while performing committee functions. Services performed by the chairman strictly as an officer are services performed in an employee status and any remuneration paid to him attributable to his duties solely as an officer constitutes wages. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 57–246, 1957–1 C.B. 338.

40.65 Disc jockeys. An individual performing services as a disc jockey, announcer, and master of ceremonies for a radio station, where he is controlled as to the content, format, time, and length of his program and is required to attend rehearsals and abide by station rules, is an employee of the radio station. §§403.204, 408.204. (Secs. 1426, 1607, '39 Code; Secs. 3121, 3306, '54 Code.)
Rev. Rul. 55–718, 1955–2 C.B. 411.

40.66 Distributors of bakery products. Dealers engaged by a bakery company to sell and distribute its products on a full-time basis on assigned routes and in accordance with established company procedures are employees even though they operate their own trucks. Where the method used by the company in determining the dealers' wages fails to reflect the correct amount of wages earned, the company should adopt a method of

computing wages similar to that stated in Mim. 6787. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 56–129, 1956–1 C.B. 470.

40.67 Distributors of bakery products. Conditions under which an individual who exclusively distributes one bakery's products is considered an employee for purposes of the FICA and the FUTA but not an employee for income tax withholding. Rev. Rul. 56–129 distinguished. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–269, 1975–2 C.B. 401.

40.68 Distributors of milk. Individuals engaged as distributors of milk under a contract providing for the right of control by the dairy company are employees of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–472, 1970–2 C.B. 217.

40.69 Domestic workers; engaged by agency. Individuals engaged by an agency other than an employment agency to perform domestic services for its clients are employees of the agency, where the agency holds itself out as being engaged in the business of furnishing domestic help, determines the individuals' remuneration, and its total business income is derived through a percentage of the remuneration received by the individuals for the performance of their services. S.S.T. 265 revoked. Clarified by Rev. Rul. 74–414. Modified by Rev. Rul. 80–365. §31.3121(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 56–502, 1956–2 C.B. 688.

40.70 Drainage construction worker using own equipment. A construction worker, engaged by a county to repair drainage ditches under the direction and control of the county surveyor, who uses his own mechanical backhoe for which he is paid a specified amount in addition to his hourly wages, is an employee of the county; services performed are excepted from employment for purposes of FICA and FUTA, but wages paid therefor are subject to withholding of income tax. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–576, 1973–2 C.B. 336.

40.71 Driver instructors. Driver instructors performing services on a commission basis for a school that furnishes the training automobile, trains them to employ its driving method, and requires them to give lessons under its name and conform to its standards are employees of the school. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–598, 1968–2 C.B. 464.

40.72 Driver of house bus. Driving and maintaining a house bus for family use constitutes domestic service for the purposes of the FICA. No liability is incurred by the employer for the withholding of income tax. §§31.3121(a)(7)–1, 31.3401(a)(3)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 58–580, 1958–2 C.B. 723.

40.73 Drivers; auto auction. An individual employed by a used car dealer to drive cars to an auction company located in a city distant from the dealer's place of business, instructed with respect to the price at which the cars are to be sold at auction, required to protect that price, paid all expenses of the trip, and remunerated on the basis of a stated amount for each car sold, is an employee of the dealer. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–144, 1955–1 C.B. 483.

40.74 Drivers; contract carriers; milk haulers. The owner-driver of a truck, a licensed contract carrier, who entered into an agreement with a corporation to haul milk from farms to its plant, is not given instructions to follow, whose route may not be changed without his consent, is responsible for seeing that the route is covered at all times and is paid on a hundredweight basis is not an employee of the corporation, but is engaged in a trade or business for self-employment tax purposes. §31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–453, 1956–2 C.B. 687.

40.75 Drivers; ice cream vendors. Ice cream vendors, who are assigned designated territories, are required to devote full time to their jobs, are paid on a commission basis, and who may be fired for improper conduct or failure to meet their sales quotas, are employees. Other individuals, who sell ice cream products on consignment, rent trucks from the distributor, sell in residential areas chosen by themselves, are paid on a commission basis, and are not required to give the distributor first call on their services, are not employees. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 57–63, 1957–1 C.B. 321.

40.76 Drivers; school bus. An individual who operates a school bus under an agreement with a county board of education, is required to furnish and maintain his own bus, perform services personally except in case of illness, and follow prescribed rules, is remunerated on the basis of the number of seats in the bus and the number of miles traveled, is an employee of the county. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–172, 1956–1 C.B. 434.

40.77 Editor; social club's monthly magazine. The editor of a social club's monthly magazine is an employee of the club for employment tax purposes. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–176, 1972–1 C.B. 323.

40.78 Employer; beauty shop leased from department store. A beauty service company is the employer of individuals performing services for it in a department leased from a store where the company retains direction and control over the performance of the individuals. Em. T. 419 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–112, 1969–1 C.B. 262.

40.79 Employer; change in partnership's members. A change in the membership of a partnership resulting from the death, withdrawal, substitution, or addition of a partner, or a shift of interests among existing partners does not, in itself, effect a termination of a partnership for purposes of the FICA and FUTA. S.S.T. 199 and S.S.T. 354 modified. §§403.205, 408.205. (Secs. 1426, 1607, '39 Code; Secs. 3121, 3306, '54 Code.)

Rev. Rul. 54–31, 1954–1 C.B. 212.

40.80 Employer; company leasing area in department store. A department store is the employer of individuals performing services in a leased department operated by the company where the store retains the right of direction and control over the performance of the individuals. S.S.T. 409 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–111, 1969–1 C.B. 261.

40.81 Employer; contractors for jobbers. A contractor who engages individuals to perform services in connection with contracts for jobbers, furnishes them machines and tools, directs and controls them, and is primarily liable for their wages is the individuals' employer. S.S.T. 153 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–417, 1970–2 C.B. 207.

40.82 Employer; corporate merger; coverage agreement for foreign employees. The resultant corporation in a statutory merger or consolidation is not required to enter into a new contract on Form 2032, Contract Coverage Under Title II of the Social Security Act, as amended, to continue the coverage for U.S. citizens employed by the foreign subsidiaries of the absorbed corporation. §31.3121(1)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 64–76, 1964–1 (Part 1) C.B. 331.

40.83 Employer; corporation or stockholder's partnership. For purposes of FICA, FUTA, and income tax withholding, workers continue to be employees of a corporation, that provides engineering consultation and rehabilitation services in municipal sewer system construction in its home State, when they are working outside the State on the corporation's subcontract with a partnership whose equal partners own all the corporation's outstanding stock. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–180, 1974–1 C.B. 298.

40.84 Employer; definition; calendar week. The term calendar week for purposes of the FUTA means a seven-day period beginning Sunday and ending Saturday, except that short weeks at the beginning and end of the calendar year are considered calendar weeks. S.S.T. 414 superseded. §31.3306(a)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 71–88, 1971–1 C.B. 291.

40.85 Employer; definition; method of counting. The Service answers several questions concerning the method of counting employees to determine whether or not an employer is liable for the Federal unemployment tax. §403.205. (Sec. 1607, '39 Code; Sec. 3306, '54 Code.)

Rev. Rul. 55–19, 1955–1 C.B. 496.

40.86 Employer; demonstrators of merchandise in retail department store. A retail department store that hires and pays a demonstrator of merchandise of a particular manufacturer, the demonstrator being subject to the control of the store as to the services to be performed and the manner of performance and to discharge by the store without recourse to the manufacturer, is the employer of the demonstrator. However, where the manufacturer hires the demonstrator, controls his activities, and pays his wages, the manufacturer is the employer. S.S.T. 333 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–367, 1968–2 C.B. 435.

40.87 Employer; foreign subsidiary of wholly-owned domestic corporation. Domestic corporation *A* wholly owns domestic corporation *B; B* wholly owns foreign subsidiary *C;* and *C* owns 55 percent of the voting stock of foreign subsidiary *D. Held,* domestic corporation *B,* rather than *A,* is eligible to enter into an agreement under the FICA to extend social security coverage to services performed by U.S. citizen employees of foreign subsidiary *D.* §36.3121(l)(1)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 60–380, 1960–2 C.B. 277.

40.88 Employer; Guamanian employees; FUTA. Amounts paid by an American employer to Guamanian citizens, not otherwise citizens of the U.S., for services performed in Guam are not subject to FUTA taxes of the U.S. §31.3306(j)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 74–304, 1974–1 C.B. 301.

40.89 Employer; individuals on vacation and sick leave. Individuals on vacation and sick leave are counted as employees in determining the status of a company as an employer for purposes

of FUTA. S.S.T. 330 superseded. §31.3306(a)–1. (Sec. 3306, '54 Code.)
Rev. Rul. 71–87, 1971–1 C.B. 290.

40.90 Employer; management corporation or related brother-sister corporations. Individuals who are officers of both a management corporation and of five related brother-sister operating corporations, whose services attributable to the operating corporations include only minor ministerial functions entailing a few hours work a year, and who are paid only by the management corporation for the services they perform for it, are employees of the management corporation but not of the operating corporations. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 74–390, 1974–2 C.B. 331.

40.91 Employer; parent-subsidiary or brother-sister corporations. Individuals engaged by a subsidiary to perform services solely for the subsidiary under its direction and control are employees of the subsidiary even though the wages are paid by the parent and subsequently billed to the subsidiary. Individuals performing services for both the parent and its subsidiary for which they are paid and controlled by the parent are employees of the parent. The executives who are officers of the parent and of one or more of its subsidiaries are employees of the subsidiary for whom they perform substantial services even though the total remuneration may be paid by the parent. S.S.T. 154 superseded. Rev. Rul. 66–162 distinguished. Amplified to provide that the above holdings are applicable to brother-sister corporations in the same manner as they are to parent-subsidiary corporations. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 1563, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–316, 1969–1 C.B. 263; Rev. Rul. 73–162, 1973–1 C.B. 417.

40.92 Employer; professional service corporation. A physician's professional service corporation that recruits secretaries, nurses, dental hygienists, and other similarly trained individuals and contracts their services to other professional people, retaining the right to establish salaries, control the performance of the duties, and discharge the individuals if the work is not satisfactory, is the employer of the individuals. §§31.3121(d)–1, 31.3121(d)–2, 31.3306(a)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 75–41, 1975–1 C.B. 323.

40.93 Employer; surety completing school construction. A surety corporation that completed performance of a breached school construction contract and paid, or controlled the payment of, the labor crew's wages by arranging with the school board to pay such wages as shown on payrolls approved by the surety's agent out of monies due the surety for completing the contract is the employer of the labor crew from the date on which it took over the construction project through the date of completion thereof. Rev. Rul. 54–471 distinguished. §§31.3121(d)–2, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 58–26, 1958–1 C.B. 354.

40.94 Employer; two persons sharing housekeeping unit; domestic servant. Two individuals sharing and maintaining an apartment as a single housekeeping unit constitute a single employing unit, and wages paid a domestic servant are taxable to both; however, either may file returns and pay taxes due. §408.205. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–669, 1955–2 C.B. 409.

40.95 Employer; wages paid by third person. An individual performing domestic services in a private home is the employee of the person who directs and controls the services even though the wages for such services are provided by a third person. The employer must take into consideration any cash remuneration paid to the domestic by the third person when computing her wages. §31.3121(d)–2. (Sec. 3121, '54 Code.)
Rev. Rul. 56–605, 1956–2 C.B. 696.

40.96 Engineers; consultant for former employer. An engineer was retired from the service of a corporation and immediately thereafter entered into an agreement with the corporation to perform services as an engineering consultant. Under the circumstances, he is not an employee of the company, but is engaged in a trade or business for self-employment tax purposes. §§1.1402(c)–1, 31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)
Rev. Rul. 57–10, 1957–1 C.B. 314.

40.97 Engineers; design engineers. Design engineers engaged by a company to design dies, who perform personal services on a continuing basis, are given instructions regarding processing and process changes, furnished materials and supplies, perform services primarily on the company's business premises and services required under the purchase orders issued to the company by its customers, and may be discharged by the company, are employees of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 67–18, 1967–1 C.B. 282.

40.98 Entertainers; B-Girls. Where B-Girls mingle with and encourage customers to buy drinks in night clubs or similar-type establishments for remuneration determined on a commission basis or otherwise, they are employees of the operators of the establishments with respect to such services regardless of whether they are considered independent contractors with respect to the performance of a particular act or specialty in the same establishment. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 62–157, 1962–2 C.B. 216.

40.99 Entertainers; circus performers; variety act. The employment status of circus performers and other variety entertainers is restated. S.S.T. 376 and Mim. 6715 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–428, 1968–2 C.B. 444.

40.100 Entertainers; radio broadcasts; arranged by sponsor. Singers and a script writer who perform services in connection with radio broadcasts arranged by an advertising agency for a sponsoring company are employees of the company. S.S.T. 333 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–396, 1968–2 C.B. 436.

40.101 Entertainers; radio broadcasts; studio-built program. Individuals performing services on a studio-built radio program supplied by a broadcasting company to a sponsoring corporation for the purpose of advertising its products are employees of the broadcasting company. S.S.T. 335 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–397, 1968–2 C.B. 438.

40.102 Estate; ancillary administrators in other states. An estate is the employer and only one return for each return period should be filed by the domiciliary administrator with respect to wages paid to all employees of the estate even though there are ancillary administrators in other states. S.S.T. 380 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1, 31.6011(a)–1, 31.6011(a)–3, 31.6011(a)–4. (Secs. 3121, 3306, 3401, 6011; '54 Code.)
Rev. Rul. 70–22, 1970–1 C.B. 204.

40.103 Exchange reporters. Exchange reporters engaged only occasionally by a law reporting company that has no right to instruct them in their performance other than where to report for work and the number of copies of transcripts required are not employees of the company. S.S.T. 260 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 70–486, 1970–2 C.B. 218.

40.104 Exercise boys and hotwalkers at race tracks; free-lance. Itinerant or free-lance exercise boys and hotwalkers performing services at race tracks for trainers of thoroughbred horses who control the details and means of services performed are employees of the trainers. Applicable for wages paid for such services after April 3, 1972. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1, 301.7805–1. (Secs. 3121, 3306, 3401, 7805; '54 Code.)
Rev. Rul. 72–155, 1972–1 C.B. 322.

40.105 Farmers; chick raising; broiler production agreement. A farm operator engaged in raising chicks pursuant to a broiler production agreement with a feed company whereby the net profits are divided equally between the parties is not an employee of the feed company. The income which the farm operator derives from raising chicks should be included in computing his net earnings from self-employment. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 58–568, 1958–2 C.B. 730.

40.106 Farming operations on neighbor's farm. The owner and operator of a farm, who contracts to do certain farming services on his neighbor's farm, uses his own machinery, pays all his own operating costs, furnishes and pays his own help or substitutes, determines the time and manner in which he will perform the services, and, except for bailing operations, is paid on an hourly basis is not an employee of his neighbor. He is an independent contractor and the employer of any helpers or substitutes engaged by him. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 56–659, 1956–2 C.B. 692.

40.107 Federal prison inmates. Prison inmates who perform services for Federal Prison Industries, Inc. are not employees for purposes of income tax withholding. §31.3401(c)–1. (Sec. 3401, '54 Code.)
Rev. Rul. 75–325, 1975–2 C.B. 415.

40.108 Federal project; individuals engaged by construction company. Individuals performing services for a company in the construction of a Federal project under a cost-plus-a-fixed-fee contract with the Department of Navy, where the Department has not reserved the right to direct the details and means by which the work is performed, are employees of the company. S.S.T. 412 superseded. §§31.3121(d)–1, 31.3121(d)–2, 31.3306(a)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 71–356, 1971–2 C.B. 350.

40.109 Fiduciaries. A fiduciary, whether receiver, trustee in bankruptcy, administrator of an estate, or liquidator of a bank, is not an employee as to services performed in his fiduciary capacity. A trust or estate managed and conducted by the fiduciary is generally the employer of all employees managed or controlled by him. This construction is applicable not only to express trusts but also to corporations and estates whose affairs are

being administered or liquidated by trustees in bankruptcy and State and Federal receivers, including bank liquidators. Returns reporting the Federal employment taxes in the name of the trust or estate are to be filed by the fiduciary. S.S.T. 120 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1, 31.6011(a)–1, 31.6011(a)–3, 31.6011(a)–4. (Secs. 3121, 3306, 3401, 6011; '54 Code.)

Rev. Rul. 69–657, 1969–2 C.B. 189.

40.110 Fiduciaries; additional duties. Where three trustees operate a business under a will specifying that differences shall be resolved by a majority vote, and they perform services outside the scope of official fiduciary duties, each trustee is an employee of the trust with respect to such services. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–195, 1955–1 C.B. 484.

40.111 Fiduciaries; executor of estate engaged by other executors. An executor of an estate who is engaged by the other executors to perform services for the estate outside the scope of his official duties is an employee of the estate with respect to the special services. Em. T. 444 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–656, 1969–2 C.B. 188.

40.112 Fiduciaries; trust created under will. A trust created under decedent's will is an employing entity distinct from the estate of the decedent and is an employer of individuals employed by the trustee to assist in the management and operation of the trust estate. S.S.T. 343 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–658, 1969–2 C.B. 189.

40.113 Financial agent for estate. A financial agent engaged by the executor of an estate to perform some of his official duties under his direction and control is an employee of the executor. However, the financial agent is an employee of the estate if he performs services for the estate, under the control or direction of the executor, outside those customarily performed by an executor. S.S.T. 255 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–487, 1970–2 C.B. 218.

40.114 Fishermen. "Company fishermen" and "independent fishermen" both supply salmon to a packers' association under a union agreement. The company fishermen are furnished all equipment by the association and deliver all their fish, with certain exceptions, to the association. The independent fishermen furnish all their own equipment and may deliver their fish to any cannery they choose. The company fishermen are employees of the association; the independent fishermen are not. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–168, 1957–1 C.B. 337.

40.115 Foster parents. Factual situations illustrate the tax treatment of amounts received and amounts expended by individuals providing foster care to children. I.T. 4068 superseded. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 61, 62, 151, 162, 170, 280A, 1401, 3121, 3306, 3401, 6041; '54 Code.)

Rev. Rul. 77–280, 1977–2 C.B. 14.

40.116 Freight car repairman. A freight car repairman employed by a steel company and its subsidiary railroad company is an employee of the railroad company with respect to services performed for the railroad company for RRTA purposes; he is an employee of the steel company with respect to services performed for that company for purposes of employment taxes. C.T. 10 superseded. §§31.3121(b)(9)–1, 31.3231(b)–1. (Secs. 3121, 3231; '54 Code.)

Rev. Rul. 68–567, 1968–2 C.B. 472.

40.117 Gardener. An individual who performs services as a gardener on a continuing basis on the premises of the person engaging him, does not furnish any tools or equipment, advertise his services, or maintain an office, shop, or other place of business, and whose services may be terminated at any time, is an employee of the person for whom the gardening services are performed. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–445, 1955–2 C.B. 396.

40.118 Gasoline service station lessee. The lessee of a gasoline service station from an oil and gasoline producing company that exercises no direction or control over the service station's business in accordance with the lease agreement and reseller's contract is not an employee of the company; however, individuals hired by the lessee are his employees. S.S.T. 266 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–305, 1969–1 C.B. 259.

40.119 Gasoline service station operator; individuals employed. An operator of a gasoline service station leased from an oil company that controls the manner of operation of the station and fixes prices at which the products are sold is an employee of the company; individuals employed by the operator with the express or implied consent of the company are also employees of the company. S.S.T. 267 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–443, 1970–2 C.B. 212.

40.120 Geologist. An individual who performs geological engineering and special geological research for clients on a part-time basis, holds his services available to the general public, is remunerated for his services on a fee basis, performs the services, other than field work, in his home, and determines the means and methods of operation, is not an employee of such clients. Income derived from such services should be considered in computing net earnings from self-employment. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–132, 1956–1 C.B. 475.

40.121 Golf professional. A golf professional who sells lessons and equipment on the premises of a golf club and fixes prices, makes appointments, and carries on his activities without orders or instructions from club members or officials is not an employee of the club. He is engaged in a trade or business and the income therefrom must be considered in computing net earnings from self-employment. S.S.T. 238 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–625, 1968–2 C.B. 465.

40.122 Golf professional. A salaried golf professional and his assistants who manage the golf shop of a country club under its supervision and are required to give lessons to the club's members at its established rates are employees of the club. S.S.T. 367 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–626, 1968–2 C.B. 466.

40.123 Golfing handicap secretary. An individual engaged by a golf association as a handicap secretary to supervise the work of volunteer handicappers of its member clubs and to assign to each club member desiring a rating an association handicap, is required to comply with the methods and rules prescribed by the association in its handicapper's manual and receives a fixed salary, is an employee of the association. (Sec. 3121, '54 Code.)

Rev. Rul. 56–131, 1956–1 C.B. 474.

40.124 Gravediggers. An individual engaged in digging graves, under an arrangement with the operator of a funeral establishment who does not give instructions other than those received from the family of the deceased, supervise except to see that such instructions are carried out, furnish equipment, pay the individual's fee except as an accommodation to the deceased's family, or derived benefit other than goodwill from making the service available, is not an employee of the operator but is engaged in a trade or business. Rev. Rul. 54–368 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–219, 1974–1 C.B. 295.

40.125 Guardian of infant beneficiary of trust. A guardian of an infant beneficiary of a trust who is paid by the trustee under a court order and is accountable only to the court in the discharge of his duties is not an employee of the trust. S.S.T. 181 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–435, 1969–2 C.B. 184.

40.126 Handyman and gardener; hospital rehabilitation program. The owner of a private residence who engages a patient of a hospital under its rehabilitation program as a handyman and gardener and who furnishes the necessary equipment, has the right to instruct the patient as to what services to perform and the manner in which to perform them, is the employer of the patient for FICA purposes. The services performed are domestic services, and the remuneration therefor is not subject to income tax withholding or the tax under the FUTA. However, remuneration for such services is includible in the patient's gross income. Distinguished by Rev. Rul. 66–288 to provide that the value of meals and lodging provided such a patient is not includible in gross income. §§31.3121(d)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–149, 1960–1 C.B. 393.

40.127 Helpers engaged by salesman. Helpers engaged by an individual who is an employee of a company to assist him in selling the company's products without either the express or implied consent of the company are not employees of the company. Neither are the helpers employees of the individual. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 56–617, 1956–2 C.B. 691.

40.128 Home demonstrators. Home demonstration agents engaged in selling products of a company that does not have the right to direct or control them in their sales activities other than the right to question results of the sales are independent contractors and are not employees of the company. S.S.T. 344 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–601, 1970–2 C.B. 225.

40.129 Homemaker; casework agency. Individuals selected and placed in private homes by a casework agency to perform services as homemakers, who are required to keep a daily record of hours worked, and are paid by the agency on completion of each assignment without regard to whether the agency will be reimbursed by the family for whom the services were performed, are employees of the agency. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–95, 1955–1 C.B. 480.

40.130 Homemakers; contract with county. An individual, employed as a homemaker under a separate contract with a county to perform services for disabled welfare recipients, who is subject to the county's direction, supervision, and review, and whose contract may be terminated at any time for failure to fulfill his contractual obligations, is an employee of the county. His wages are subject to income tax withholding; however, they are excepted from employment for FUTA and FICA purposes. Social Security coverage may be obtained only by means of an agreement between the State and the Secretary of Health, Education, and Welfare. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–268, 1973–1 C.B. 415.

40.131 Homeworkers; addressing envelopes. Individuals engaged in addressing envelopes for a corporation in their own homes without direction and control as to the means and method of operation are not employees of the corporation where the performance of such services is not subject to licensing under State law. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–432, 1954–2 C.B. 336.

40.132 Homeworkers; typists. An individual, since 1953, has done typing from time to time on a piece-work basis in her home under an oral agreement with a corporation without direction and control as to the means and method of completing an assignment and no guarantee of a minimum quota of work or compensation. The individual's services are not subject to state licensing requirements. The individual is not an employee of the corporation under common law rules for purposes of FUTA and income tax withholding; however, she is an employee for FICA purposes for services performed after 1954. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 64–280, 1964–2 C.B. 384.

40.133 Homeworkers; weaver; Christmas wreaths. Individuals solicited by a company to weave Christmas wreaths in their own homes on company supplied frames but without company instruction, direction, or control and who are under no obligation to sell the finished wreaths to the company are not employees of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–62, 1974–1 C.B. 291.

40.134 Hostesses calling on newcomers to community. Hostesses who perform services for a company by calling on newcomers to a community, and who agree at all times to follow the advice, directions, and orders of the company, are employees of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–447, 1968–2 C.B. 447.

40.135 Illegal activities. The taxing provisions of the FICA are applicable to individuals engaged in illegal activities where they perform services as employees. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–77, 1960–1 C.B. 386.

40.136 Individuals; State work program under Comprehensive Employment and Training Act. Payments to a trainee in a program under titles I and II of the Comprehensive Employment and Training Act for services performed during on-the-job training for a private construction company are wages subject to the FICA, FUTA, and income tax withholding. Such payments for work experience in a city clinic are wages subject to income tax withholding but the services are excepted from employment for FICA and FUTA purposes. Payments and allowances for which no services are performed, however, are not wages for employment tax purposes. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–246, 1975–1 C.B. 24.

40.137 Individuals; State work program under Manpower Development and Training Act. Participants in a State program, established to provide short-term employment in disaster relief activities for unemployed individuals and funded under the Manpower Development and Training Act of 1962, are employees of the State excepted from employment for purposes of the FICA and FUTA, but the payments made to them are subject to income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–413, 1974–2 C.B. 333.

40.138 Individuals engaged by bank; operation of real properties. Individuals engaged in performing services in the operation of real properties by a bank that is a mortgagee in possession under assignments of rents are employees of the bank. S.S.T. 314 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–573, 1971–2 C.B. 349.

40.139 Individuals engaged by employee of company. Individuals engaged by an employee of a company to assist him in performing services pursuant to a written contract with the company are employees of the company. S.S.T. 336 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–440, 1970–2 C.B. 209.

40.140 Individuals engaged by trustee. Individuals engaged by a trustee on behalf of a trust to perform services in connection with trust property are employees of the trust. Liability for FICA and withholding of income tax is incurred by the trust with respect to wages paid such individuals. FUTA liability is incurred by the trust provided it is an employer. S.S.T. 39 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–273, 1970–1 C.B. 206.

40.141 Instructors; airline industry. Part-time experienced instructors engaged by a school offering courses of instruction for certain occupations in the airline industry are employees of the school. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–308, 1970–1 C.B. 199.

40.142 Instructors; vocational training; engaged by board of education. Instructors engaged by a city board of education to conduct vocational education classes in a company's plant under the direction and control of the board are employees of the city; services performed are excepted from employment for purposes of the FICA and FUTA, but are subject to the withholding of income tax. The instructors are employees of the company with respect to part-time services performed in instructing and advising employees of the company, outside the scope of those contemplated by the vocational educational program. S.S.T. 362 superseded. §§31.3121(b)(7)–1, 31.3121(d)–1, 31.3306(c)(7)–1, 31.3306(i)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–291, 1971–2 C.B. 343.

40.143 Insurance adjusters; board of fire underwriters. Insurance adjusters who operate independently established businesses with their own clerical staffs are not employees of a board of fire underwriters that engages them on a part-time basis to determine and settle fire losses. S.S.T. 143 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–426, 1968–2 C.B. 442.

40.144 Insurance adjusters; insurance company. Insurance adjusters engaged on a full-time basis by an insurance company that requires them to work in its office during regular working hours and to follow its clerical procedures are employees of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–427, 1968–2 C.B. 442.

40.145 Insurance agents; branch managers and soliciting agents. Insurance company branch managers whose activities are subject to control and supervision are employees of the company; soliciting agents not subject to company control and supervision are not employees. S.S.T. 249 superseded. §§31.3121(d)–2, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–287, 1969–1 C.B. 257.

40.146 Insurance agents; independent contractors. Insurance company agents whose activities are not subject to control and supervision by the company are independent contractors and are not employees of the company. G.C.M. 18705 superseded. §§31.3121(d)–1, 31.3306–(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–288, 1969–1 C.B. 258.

40.147 Insurance agents; industrial. An agent remunerated solely by way of commission who sells insurance for an association on the industrial or debit plan is an employee of the association for purposes of the FICA and income tax withholding. The services of such an agent are excepted from employment under the FUTA. §§31.3121(d)–1, 31.3306(c)(14)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–176, 1958–1 C.B. 349.

40.148 Insurance agents; industrial. An individual engaged by two related insurance companies as an industrial insurance salesman is remunerated on a commission basis, determines his own work schedule and method of solicitation, is provided desk space, forms and collection books, receives instructions in selling by company personnel, is required to file reports and remit collections on a weekly basis and performs solely for the two companies, is an employee of the two insurance companies for FICA and income tax withholding purposes. The services of such an individual are excepted from employment for FUTA purposes. §§31.3121(d)–1, 31.3306(c)(14)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–177, 1958–1 C.B. 351.

40.149 Insurance agents; life, accident and health insurance. An insurance salesman who, under the applicable common law rules, does not have the status of an employee, and who sells both life and accident and health insurance policies for one company, but primarily sells accident and health insurance, is not a full time life insurance salesman and, consequently not an employee for FICA purposes. The individual is engaged in a trade or business for self-employment tax purposes. Rev. Rul. 54–312 clarified. §§1.1402(c)–1, 31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 59–103, 1959–1 C.B. 259.

40.150 Insurance salespersons; also corporate officers. Officers of an insurance company who sell insurance policies aside from and independent of their duties as officers, are, in effect, serving the company in two different and distinct

capacities. They are employees with respect to duties performed as officers of the company. They are not employees with respect to services performed in selling insurance and the remuneration received for such services must be considered in computing net earnings from self-employment. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(a)–1. (Secs. 1401, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–505, 1958–2 C.B. 728.

40.151 Insurance salespersons; part-time. Commissions (deferred or renewal) received by a part-time life insurance salesman, who does not qualify as an employee under the employment tax rules for determining employer-employee relationships, constitute earnings from self-employment. §§39.481–1, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–309, 1954–2 C.B. 261.

40.152 Interviewers. Interviewers paid on an hourly basis to conduct market research surveys, for a company that hires from its list of people who want to conduct interviews on a permanent basis, issues specific instructions for conducting interviews, may select the interview site, sets quotas and deadlines for completion, does not permit the interviewers to hire assistants or substitutes, and requires daily reports, are employees of the company. Rev. Rul. 65–188 distinguished. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–243, 1975–1 C.B. 322.

40.153 Interviewers. Rev. Rul. 75–243, which holds that certain market research survey interviewers are employees, will be applied without retroactive effect with respect to wages paid before July 1, 1975. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1, 301.7805–1. (Secs. 3121, 3306, 3401, 7805; '54 Code.)

Rev. Rul. 78–284, 1978–2 C.B. 253.

40.154 Janitors. Individuals engaged by a company that furnished janitorial and security services to buildings are employees of the company. Individuals engaged by several different property owners to perform janitorial services are employees of each property owner. Rev. Rul. 60–90 distinguished. S.S.T. 172 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–460, 1968–2 C.B. 449; Rev. Rul. 68–461, 1968–2 C.B. 451.

40.155 Jockey. An individual engaged under contract as a jockey and exercise boy by a race horse owner who requires him to report for duty when needed and is under the direction and control of the owner is an employee of the owner. S.S.T. 311 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–573, 1970–2 C.B. 221.

40.156 Jockey; free-lance. A free-lance jockey engaged by a race horse owner for one race is not an employee of such owner for employment tax purposes. Em. T. 446 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–572, 1970–2 C.B. 221.

40.157 Loaders; hired by truck driver-employee. Individuals engaged by truck driver-employees, with the express consent of their employer trucking company, to unload the company's trucks, and who were paid out of funds provided by the company, are also employees of that company, even though not regularly employed. The *Bonney Motor Express, Inc.*, decision will not be followed. §31.3121(d)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 63–115, 1963–1 C.B. 178.

40.158 Logging contractor. An individual who contracts to furnish men and equipment necessary to cut, skid, and haul timber for a lumber company that exercises no control or supervision over the individual's operation methods is not an employee of the company; however, he is the employer of his logging crew for employment tax purposes. S.S.T. 399 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–274, 1971–1 C.B. 287.

40.159 Lumber company; piecemakers and skidders. Piecemakers, skidders and hired assistants engaged pursuant to an oral contract, with a lumber company that retains the right to control and direct the manner in which the work is completed are employees of the company. S.S.T. 396 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–273, 1971–1 C.B. 286.

40.160 Magazine salespersons. Reading club and rural salesmen soliciting magazine subscriptions in assigned districts subject to acceptance by a publishing company that does not control their working hours and the manner in which they perform their services are not employees of the company. S.S.T. 331 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–370, 1971–2 C.B. 345.

40.161 Management agent acting on behalf of property owner. The owner of improved real estate is the employer of individuals performing services on the property who are engaged and controlled by a property management company on the owner's behalf and who are paid from separate funds supplied by the owner. S.S.T. 92 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–267, 1970–1 C.B. 205.

40.162 Management agent as independent contractor for property owner. A property management company acting as an independent contractor in the care and operation of improved real estate for the owner is the employer of individuals engaged to perform services for the company. S.S.T. 332 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–266, 1970–1 C.B. 204.

40.163 Management services; assignor of rights to invention. An individual who assigns his rights to an invention to a company and supervises the exploitation of such invention under company control is an employee of the company. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–561, 1955–2 C.B. 402.

40.164 Management services; bean station for canning company. A person is self-employed, and not an employee, where he agrees to perform certain services as manager of a bean station for a corporation that does not preclude his engaging in other occupations, does not require him to perform services personally and pays him on a poundage or production basis. §§39.481–1, 408.204, 408.208. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–573, 1954–2 C.B. 342.

40.165 Management services; beneficiary of trust property. A beneficiary who manages property on behalf of himself and the other beneficiary thereof is not an employee of the trust company which acts as trustee and holds title to the property, where the trustee has no right to control or manage the property. (Sec. 3121, '54 Code.)

Rev. Rul. 56–36, 1956–1 C.B. 455.

40.166 Management services; clerks of the works. A corporation engaged clerks of the works to supervise a construction project. The clerks who are directly responsible to the corporation for performance of their services, and may be dismissed for cause, are, however, paid by the architectural firm which is reimbursed for the amounts advanced. The clerks are employees of the corporation for FICA and FUTA purposes. The architectural firm is responsible for income tax withholding. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–145, 1957–1 C.B. 332.

40.167 Management services; factory outlet. An individual, engaged in the operation of a "remnant or mill ends" store as a factory outlet of a fabric corporation, who has no investment in the enterprise, may not handle goods competitive to those produced by the corporation, and is required to perform the services personally, is an employee of the corporation. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–613, 1955–2 C.B. 406.

40.168 Management services; farm manager. An individual is engaged by a company to manage a farm for a fixed monthly sum and given considerable latitude in the day-to-day operation of the farm. However, he is subject to such overall instructions as the company may give from time to time. The farm manager and any employees he engages to work on the farm are employees of the company and the services performed by the farm manager are agricultural labor. (Sec. 3121, '54 Code.)

Rev. Rul. 56–440, 1956–2 C.B. 685.

40.169 Management services; laundry. An individual who operates a cash and carry laundry and dry cleaning agency under an agreement with a laundry firm, works without supervision on a straight commission basis, determines his own hours and routine, engages his own help, and pays all of his expenses, is not an employee of the laundry firm. Such individual is engaged in a trade or business and income derived therefrom is considered in computing net earnings from self-employment. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–15, 1956–1 C.B. 451.

40.170 Management services; motel. A man and his wife engaged by the owner of a motel as managers at a specified weekly rate who are required to furnish service twenty-four hours daily, register guests, collect rents, maintain the rooms in good condition, and are furnished all the necessary equipment and office supplies by the owner are employees of the owner. (Sec. 3121, '54 Code.)

Rev. Rul. 56–119, 1956–1 C.B. 469.

40.171 Management services; puzzle contest manager. An organization which furnishes puzzle contests to newspaper publishers for circulation promotion purposes assigns a contest manager to a newspaper during a circulation campaign. The contest manager, who is paid a weekly salary or commission, is reimbursed for expenses, performs his services on the publisher's premises, regulates his own working time, and may perform services for others, is an employee of the organization. (Sec. 3121, '54 Code.)

Rev. Rul. 56–156, 1956–1 C.B. 478.

40.172 Management services; supervisory committee of credit union. Members of the supervisory committee of a credit union are not employees of the organization. §31.3121(d)–1. (Sec. 3121; '54 Code.)

Rev. Rul. 57–91, 1957–1 C.B. 326.

40.173 Management services; trailer park. Under an agreement a husband and wife manage a trailer park for the owner thereof. They hire the necessary helpers, fix their wages, pay them from a petty cash account, and have charge of all operating details of the trailer park. They are paid as compensation a stated percentage of the gross collections from the trailer park rentals and the laundry service meters. The contract may be terminated upon thirty days' notice. *Held*, such individuals and the helpers they hire are employees of the trailer park owner. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 62–124, 1962–2 C.B. 215.

40.174 Manicurist in barber shop. A manicurist performing services in a barber shop who, under an agreement with the barber shop operator, performs manicuring as well as other unrelated services for which the fees charged are set by the operator, is required to be available to work during those hours the shop is open, turns over to the operator a specified percentage of amounts received, and is guaranteed a weekly minimum, is an employee of the operator. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–574, 1973–2 C.B. 334.

40.175 Manicurist in barber shop. A manicurist performing services in a barber shop who, under an agreement with the barber shop operator, is free to refuse service to any patron, regulates her working hours, furnishes her own equipment and supplies, collects and retains the proceeds from her work, and may terminate the arrangement whenever it is no longer satisfactory, is not an employee of the operator but is engaged in a trade or business for self-employment tax purposes. Rev. Rul. 54–99 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–575, 1973–2 C.B. 335.

40.176 Milk-tester; dairy herd improvement association. A milk-tester is engaged by a dairy herd improvement association to test milk for its members, keep feed and production records, write reports, etc., is an employee of the association where the association requires the tester to produce a minimum quota of work, perform the services personally, cover a specified territory within a given time, and follow a regular routine and, in addition, furnishes all necessary equipment and has preferred call on the tester's time. §§31.3121(d)–1, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 59–51, 1959–1 C.B. 257.

40.177 Mobile diner operator. An individual who, under a contract with the owner of a mobile diner, selects the site for operation of the diner, determines the hours it will be open, purchases all food, supplies and beverages to be sold as well as the gasoline and oil necessary for moving the diner, and receives 50 percent of the net profits of the diner, is not an employee of the owner. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–18, 1955–1 C.B. 475.

40.178 Models; engaged by photographic illustrators. Professional models engaged by photographic illustrators under facts and circumstances similar to those in the *Barnaba Photographs Corp.* case are not employees of the illustrator. Mim. 6495 superseded; distinguished by Rev. Rul. 74–332. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–144, 1971–1 C.B. 285.

40.179 Models; graduates of agency's school. Individuals under oral agreements with a modeling agency after they graduate from its school, who may accept or reject modeling assignments, must furnish their own transportation and cosmetics, but who are prohibited from performing free lance modeling, are supervised by the agency, and paid at the hourly rate determined by the agency, and whose services may be terminated because of client's complaints or rejection of too many assignments are employees of the agency. Rev. Rul. 74–144 distinguished. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–332, 1974–2 C.B. 327.

40.180 Motion picture production; actress, narrator and commercial artist. An actress, a narrator, and a commercial artist are engaged by a film company to produce industrial and commercial motion pictures. The actress and narrator are given technical instructions by the company and are paid at the prevailing rate. The commercial artist supplies his own materials and equipment and usually performs the services in his home studio; he may delegate the work to other individuals of his own choosing. The actress and the narrator are employees of the company but the artist is not. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–155, 1957–1 C.B. 333.

40.181 National railway labor organization. An individual performing services for a local lodge or State legislative committee of a national railway organization is, with respect to services he performs for the State legislative committee, an employee for purposes of the RRTA, but he is not an employee with respect to services performed for the local lodge. However, those services for the lodge are not excepted from employment by the FICA. C.T. 8 and C.T. 9 superseded. §§31.3121(b)(9)–1, 31.3231(b)–1. (Secs. 3121, 3231; '54 Code.)

Rev. Rul. 68–542, 1968–2 C.B. 470; Rev. Rul. 68–543, 1968–2 C.B. 471.

40.182 Negotiators; regional education association. Individuals who are engaged under an oral contract by a regional education association representing teachers to perform services as negotiators, who are furnished stationery and telephone services, general guidelines to follow, and recommended items for negotiation, who are required to perform the services personally, make oral reports to the executive committee of the association and to the full membership, and a written summary on the results of negotiations, and who receive a guaranteed lump sum payment upon completion of the negotiations, are employees of the association. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–510, 1974–2 C.B. 336.

40.183 Newspaper advertising solicitor. An individual soliciting advertising for a newspaper company on a commission basis, the company having no control or right of control over the activities of the individual or his staff, is not an employee of the newspaper. He is, however, the employer of individuals engaged by him in the operation of his advertising business. S.S.T. 306 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–226, 1969–1 C.B. 257.

40.184 Newspaper columnists. A writer of a weekly column about a subject in which he is an authority, who is paid by the newspaper on a column inch basis, chooses his own material which is printed under his by-line and which is not edited by the paper, is under no obligation to the paper to cover news events, work on the paper's premises, or maintain regular working hours, is not an employee of the newspaper. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 65–312, 1965–2 C.B. 394.

40.185 Newspaper plant operator and employees; lease agreement. An individual operating a newspaper plant owned by a newspaper company under a lease agreement, whereby the company retains the right to control operations and direct the editorial policy of the paper and the individuals employed by him, are employees of the company. S.S.T. 305 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–439, 1970–2 C.B. 208.

40.186 Nurses; licensed practical. A licensed practical nurse, under an oral contract with a company that obtains requests for nursing services, who performs professional nursing services under the company's name, is issued instructions by the company, is paid by the company at a predetermined rate on a weekly basis, is subject to periodic checks by the company, may terminate the contract at any time, and may be terminated for cause by the company, is an employee of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–101, 1975–1 C.B. 318.

40.187 Nurses; registered or licensed practical. Whether a nurse is self-employed or an employee depends upon the facts and circumstances of the case. Generally, licensed practical nurses and registered nurses engaged in private duty nursing are considered to be self-employed. However, when such nurses are on the regular staff of a hospital, clinic, nursing home, physician, etc., work for a salary and follow prescribed routines during fixed hours when not available for private duty nursing, they are employees. Mim. 6658 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 61–196, 1961–2 C.B. 155.

40.188 Officer-stockholder; small business corporation. An officer-stockholder of a small business corporation performing substantial services as an officer of the corporation, for which he is paid a salary, is an employee of the corporation. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–361, 1973–2 C.B. 331.

40.189 Oil company bulk plant operator; exclusive agent. An individual appointed to operate a bulk plant as the exclusive agent for an oil company who controls and directs the operation of the plant and any individuals engaged by the plant operator with the express and implied consent of the company are employees of the company. S.S.T. 290 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–444, 1970–2 C.B. 214.

40.190 Oil company bulk plant operator; independent contractor. Agents operating bulk plants for oil companies that do not have the right of control over the details and means of operation sufficient to establish an employer-employee relationship are regarded as independent contractors. Mim. 5925 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–446, 1970–2 C.B. 215.

40.191 Oil well casing crew. Individuals engaged by oil producers and drilling contractors to remove oil well casings under their general direction or under the supervision of their employees are employees of the oil producers and drilling contractors. Where the manager or foreman of the

crew is engaged to furnish the particular services required and has the right to exercise general control over the members of the crew, such members are employees of the manager or foreman. S.S.T. 296 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401: '54 Code.)

Rev. Rul. 70–662, 1970–2 C.B. 231.

40.192 Oil well pumpers. Oil well pumpers performing services for a corporation pursuant to a continuing relationship created under a written agreement terminable at any time where the corporation has the right to exercise whatever control is necessary to assure proper performance of their services are employees of the corporation. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401: '54 Code.)

Rev. Rul. 70–309, 1970–1 C.B. 199.

40.193 Operator of motorcycle; delivery service. The operator of a motorcycle hired by a company engaged in general delivery service to make deliveries during regular working hours each day for another company is an employee of the general delivery service company. S.S.T. [illegible] superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–348, 1969–1 C.B. 260.

40.194 Orchestra leaders and members. Examples are set forth to update and restate the rules for determining the status of orchestra leaders and members under the current statute and regulations for employment and self-employment tax purposes. Mim. 6187 and Mim. 6284 superseded. Mim. 4651, Mim. 5638, S.S.T. 47, S.S.T. 324 and S.S.T. 375 obsoleted. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–107, 1968–1 C.B. 427.

40.195 Outside readers; motion picture company. Individuals engaged as outside readers in reading and preparing synopses for a motion picture company which exercises no control over the details of the work are not employees of the company. S.S.T. 212 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–224, 1969–1 C.B. 256.

40.196 Partnership members. Bona fide members of a partnership who devote their time and energies to the trade or business of the partnership, or in providing services to it as an independent contractor, are self-employed individuals and not employees of the partnership. Remuneration received by the partners is not wages. S.S.T. 23 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–184, 1969–1 C.B. 256.

40.197 Partnership members; services for corporation. A corporation that supervises, directs, and controls services performed for it by members of a contracting partnership is an employer and the partnership members are employees. S.S.T. 239 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401: '54 Code.)

Rev. Rul. 69–183, 1969–1 C.B. 255.

40.198 Patrol services performed for merchants. An individual and his assistants performing patrol services for certain merchants who do not, either individually or as a group, retain the right to control or direct the performance of their duties but only require that specified service be performed each night are not employees of the merchants. S.S.T. 398 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–530, 1970–2 C.B. 220.

40.199 Photographers; home portraits. Individuals, engaged by a portrait studio to take photographs in the homes of its customers, perform the services personally, are remunerated on a piece-work basis, furnish equipment such as cameras and lights, operate under the studio's name, perform services for the studio on a full-time basis, maintain no studios of their own, and the services may be terminated by either party at any time, are employees of the studio. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 56–694, 1956–2 C.B. 694.

40.200 Physicians; assignment of lifetime services to grantor trust. A medical corporation that treated its doctors as employees during 1979 and 1980, is not entitled to relief under section 530 of the Revenue Act of 1978, when the doctors formed trusts in 1981 and the corporation made payments to the trusts for the doctors' services and did not treat the doctors as employees during that year. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–3. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 83–16, 1983–1 C.B. 235.

40.201 Physicians; associates; hospital's pathology department. Associate physicians paid by and working full time for the director of a hospital's pathology department are employees of the director for employment tax purposes. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–203, 1972–1 C.B. 324.

40.202 Physicians: engaged by clinic. Associate physicians rendering full time professional services to a clinic operated by a partnership that furnishes them private offices, equipment, and supplies and has the right to direct and control them in the performance of their services are employees of the clinic. S.S.T. 363 superseded.

§§31.3121(d)–1, 31.3306(i)1–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–629, 1970–2 C.B. 228.

40.203 Physicians: hospital pathology laboratory. A pathologist engaged to conduct and operate a hospital laboratory as its director and administrative head under a contract providing that he may not assume outside duties to the detriment of his primary services to the hospital, may not contract to provide pathological service to other hospitals without written consent, must comply with all rules and regulations of the hospital, and is guaranteed a minimum salary, is an employee of the hospital. Rev. Rul. 261 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–417, 1973–2 C.B. 332.

40.204 Physicians: part-time services. A physician engaged in the private practice of medicine who in connection therewith examines and treats company employees as a part-time service for the company is not an employee of the company. S.S.T. 291 revoked. Distinguished by Rev. Rul. 61–178. §§403.204, 408.204. (Secs. 1426, 1607, '39 Code; Secs. 3121, 3306, '54 Code).

Rev. Rul. 84, 1953–1 C.B. 404.

40.205 Physicians; part-time services. A resident physician at a hospital who does not have a private practice and whose services are made available to an organization on a part-time basis as a part of his clinical training during certain hours each week, is paid a stated amount per month, and his services may be terminated at any time, is an employee of the organization. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–21, 1957–1 C.B. 317.

40.206 Physicians; part-time services. A physician engaged in a private practice who renders medical services to employees of a company on its premises on a part-time basis, is required to conform to the company's policies, is supervised by the company's head physician, works a fixed schedule, may not respond to an emergency arising in his private practice during his working hours for the corporation, and is extended all the benefits and privileges of the company's regular employees, is an employee of the company with respect to services performed therefor. Rev. Rul. 84 distinguished. Amplified by Rev. Rul. 66–274. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 61–178, 1961–2 C.B. 153.

40.207 Physicians; pathologists; hospital department director. A physician who serves as director of a hospital's department of pathology is not an employee of the hospital where he receives for his services a percentage of the department's income, pays the remuneration of his associate or substitute, is permitted to engage in the private practice of medicine, and is not entitled to certain employee fringe benefits. Rev. Rul. 261 distinguished and Rev. Rul. 61–178 amplified. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 66–274, 1966–2 C.B. 446.

40.208 Piano and organ repairperson. Piano and organ repairmen performing part-time unscheduled services without supervision, but required to complete service reports under an oral agreement with a company responsible for their work and the billing of customers, are employees of the company.

§§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401: '54 Code.)

Rev. Rul. 68–248, 1968–1 C.B. 431.

40.209 Pilot and truck driver; aerial crop dusting firm. The application of FICA, FUTA, and withholding of income tax is discussed with respect to services performed by a truck driver and a pilot for a firm engaged in aerial crop dusting and spraying. Rev. Rul. 54–574 superseded. §§31.3121(d)–1, 31.3121(g)–1, 31.3306(i)–1, 31.3306(k)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–583, 1968–2 C.B. 459.

40.210 Police officers; off-duty; escort services. City police (traffic) officers who are engaged to perform escort services for various funeral parlors during their off-duty hours by a funeral escort service that directs them to which funeral parlor to go to perform their services, pays them, and may terminate the services at any time are employees of the escort service. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–616, 1954–2 C.B. 346.

40.211 Police officers; off-duty; traffic control at bank. Off-duty policemen who volunteer for assignment to direct traffic at a bank auto drive-in facility, who are controlled by the police department, and who are paid by the city from the bank's payments to the police department for the service, are employees of the city excepted from employment under the FICA and FUTA but their pay is subject to income tax withholding. §§31.3121(b)(7)–1, 31.3121(d)–1, 31.3121(d)–2, 31.3306(a)–1, 31.3306(c)(7)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–162, 1974–1 C.B. 374.

40.212 Police officers engaged by merchant. A regular member of a municipal police force who, during his off-duty hours, is engaged

and paid by a merchant to regulate lines of customers outside the merchant's business establishment so that entrances of nearby business establishments are not blocked is an employee of the merchant. (Sec. 3121, '54 Code.)

Rev. Rul. 56–154, 1956–1 C.B. 477.

40.213 Police officers engaged by merchant. Police officers who are engaged and paid by merchants to protect their property against burglary, fire, etc. and who perform such services under the direction and control of the merchants are employees of the merchants even though they may be called by the local sheriff in an emergency to perform public services. S.S.T. 281 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–529, 1970–2 C.B. 220.

40.214 Porter in barber shop. An individual who performs services as a porter for the operator of a barber shop in exchange for the privilege of operating the shoeshine stand therein is an employee of the barber shop. The fair rental value of the shoeshine stand is wages. S.S.T. 147 superseded. §§31.3121(a)–1, 31.3121(d)–1, 31.3306(b)–1, 31.3306(i)–1, 31.3401(a)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–517, 1968–2 C.B. 454.

40.215 President and sole shareholder; closely held corporation. The president and sole shareholder, except for qualifying shares, of a closely held corporation is an employee of the corporation notwithstanding that he sets his own salary and prescribes his own duties. S.S.T. 338 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–86, 1971–1 C.B.285.

40.216 Printers; contract work. A self-employed printer who entered into an agreement with a company to produce printed matter used in its business, is furnished equipment and materials by the company, is required to do the work personally and work a regular five-day week exclusively for the company, is an employee of the company, even though he is established in an independent business. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–658, 1955–2 C.B. 407.

40.217 Private duty hospital attendant. A private attendant, who is not a registered nurse or a licensed practical nurse, chosen by a patient from a hospital list to provide care while hospitalized, is an employee of the patient. Such services may not be regarded as "domestic service in a private home." Modified to provide that whether such services of a domestic nature performed in a nursing home, convalescent home, or hospital may be considered domestic service in a private home depends on a complete analysis of such factors as the nature of the patient's illness, physical condition, length of confinement, and social or economic status. §§31.3121(a)(7)–1, 31.3121(d)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1, 31.3401(a)(4)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–398, 1968–2 C.B. 439; Rev Rul. 74–388, 1974–2 C.B 325.

40.218 Process servers. Process servers who serve legal papers for a company in behalf of various attorneys, determine their own method of operation, are required to report only the results of their services to the company, and are only paid for each successful service of papers are not employees of the company. S.S.T. 292 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–574, 1970–2 C.B. 222.

40.219 Proctors; national association of employers. Proctors engaged by a national association of employers to administer uniform examinations given by the association throughout the U.S. are employees of that association. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–270, 1972–1 C.B. 325.

40.220 Promoters; "forum-type dinner clubs." An individual performing services for an organization as an organizer of "forum-type dinner clubs" who selects the cities in which he establishes clubs, engages, pays and directs the necessary help, is not required to give preference to the organization's affairs, work a specified number of hours, establish a minimum number of clubs, or furnish reports, other than a report on the number of members secured, is not an employee of the organization. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–233, 1955–1 C.B. 116.

40.221 Race track stewards. Race track stewards who are licesned by a State horse racing board, act as the board's representatives at approved race meetings, and are subject to discharge by the board are considered employees of the State agency and are excepted from employment. The remuneration for their services is not subject to FUTA and FICA taxes. Social Security coverage may be obtained only by means of an agreement between the State and the Secretary of Health, Education, and Welfare. For income tax withholding purposes, they are considered employees of the racing association that controls the payment for their services. §§31.3121(b)(7)–1, 31.3121(d)–1, 31.3306(c)(7)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul 73–253, 1973–1 C.B. 414.

40.222 Reporter; country correspondents. Country correspondents who furnish weekly news items to a newspaper that has no control over the items submitted or hours devoted to work and pays only for those items accepted and published are not employees of the newspaper. Rev. Rul. 60–148 distinguished and S.S.T. 105 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–644, 1968–2 C.B. 468.

40.223 Reporter; law reporting firm. Reporters who perform services in connection with a private reporting business of a court reporter, in an office provided by the court reporter, and who receive as remuneration a stated percentage of the receipts derived from their services, are employees of the court reporter. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–42, 1957–1 C.B. 320.

40.224 Reporter; part-time newspaper correspondents. Newspaper correspondents who are not required to furnish a minimum of material to a daily newspaper or to devote a specified amount of time to the newspaper's business, but are compensated at a fixed monthly rate, are expected to meet daily deadlines, are required to report the news completely and promptly, and are permitted to use the newspaper's office, typewriters and supplies in performing their services are employees of the newspaper. Distinguished by Rev. Rul. 68–644. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–148, 1960–1 C.B. 391.

40.225 Research associate for industrial association. A research associate that conducts scientific research at the National Bureau of Standards for an institute, an industrial association, is an employee of the institute. S.S.T. 370 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–292, 1971–2 C.B. 344.

40.226 Resident interviewers. Individuals conducting surveys of response to a corporation's advertising that is interested only in the result of the survey are not, under the circumstances, employees of the corporation; each is engaged in a trade or business. §§1.1402(c)–1, 31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 65–188, 1965–2 C.B. 390.

40.227 Sales agents. Sales agents engaged under contract by a manufacturing company that retains the right to direct and control their sales activities and pays them a specified percentage of the retail price of merchandise sold are employees of the company. S.S.T. 278 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–586, 1970–2 C.B. 223.

40.228 Sales agents. Sales agents engaged by a manufacturing company that grants them exclusive right to purchase its products at wholesale prices and resell them at retail within specified territories and does not control or direct their operations or solicitation of business are not employees of the company. S.S.T. 279 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–587, 1970–2 C.B. 224.

40.229 Sales managers; supervisors of sales representatives. District sales managers engaged to supervise sales representatives of a company that has the right to direct and control the manner in which their services are performed are employees of the company. S.S.T. 280 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–617, 1970–2 C.B. 226.

40.230 Sales merchants; catalog sales. Individuals engaged by a company under contracts to operate as its authorized catalog sales merchants, who receive a percentage commission on net sales, set their own days and hours of work, provide their own business premises and essential equipment, choose their own advertising and promotional displays, pay their own expenses, may hire assistants, may provide their own credit to customers and are liable for any losses resulting therefrom, and arrange with customers for delivery and installation and charges applicable thereto, are not employees of the company for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–211, 1976–1 C.B. 320.

40.231 Salesclerks; trained and assigned by employee service company. Salesclerks trained by an employee service company that assigns them to retail stores to perform temporary services and has the right to control their performance are employees of the company. S.S.T. 377 superseded. §§ 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–630, 1970–2 C.B. 229.

40.232 Salespersons; automobile club. An individual engaged by an automobile club to distribute automobile license plates and to sell club memberships, who maintains and operates his own office, engages and pays his own assistants, bears all expenses incurred in connection with his activities for the club, and receives a fixed fee for each license plate issued and a commission on each club memebership sold is not an employee of the club but is engaged in a trade or business, the income from which is includible in computing net earnings from self-employment. §§1.1402(c)–1, 31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 62–79, 1962–1 C.B. 184.

40.233 Salespersons; cable television subscriptions. Salespersons selling cable television

system subscriptions at prescribed prices and terms within assigned territories, under written agreements describing them as independent contractors, who receive only commissions and are required to pay all their own expenses, but who are required to follow up leads furnished by the company, appear at the company premises and submit daily reports, and may be terminated on the basis of an unfavorable comparison of sales to non-sales, are employees of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–111, 1974–1 C.B. 294.

40.234 Salespersons; carpets. Experienced carpet salespeople engaged under contract by a carpet mill to sell the mill's carpeting solely on a commission basis, are not regulated or assisted by the mill, are given exclusive territories, are expected to service their territories as the sales volume increases, and often engage other salespeople who receive a salary or a portion of the commissions, are not employees for purposes of FICA, FUTA, or income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–201, 1976–1 C.B. 319.

40.235 Salespersons; cemetery company. Individuals and their assistants engaged under contract to sell burial lots and mausoleum space for a cemetery company that does not have the right to control them in their sales activities are not employees of the company. S.S.T. 390 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–619, 1970–2 C.B. 228.

40.236 Salespersons; clothing wholesaler. Salespersons engaged by a company to sell clothing products to retailers on a commission basis, required to furnish their own transportation and pay all of their selling expenses, and not controlled or directed as to their selling activity, except that they are expected to perform all of their services personally, are not employees of the company for income tax withholding purposes. They are employees for FICA purposes and, with respect to remuneration paid after December 31, 1971, for services performed after that date, are also employees for FUTA purposes. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–374, 1973–2 C.B. 331.

40.237 Salespersons; commission. A commission salesperson engaged by a manufacturing company to solicit for its products, and who operates entirely independently and without restriction as to his manner of operations, is not an employee of the company but is engaged in a trade or business for self-employment tax purposes. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–412, 1954–2 C.B. 335.

40.238 Salespersons; furniture and electrical appliances. A commission salesman engaged by a retail furniture and electrical appliance company, who is furnished names of prospects on whom he is expected to call, uses the company's office as headquarters, and at times performs sales services in the company's store, is an employee of the company. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–124, 1955–1 C.B. 482.

40.239 Salespersons; home improvement. Individuals, engaged by a home improvement company under oral agreements to sell its products and services to homeowners, who make their own appointments, furnish their own transportation, pay their own expenses, are paid commissions, allowed a weekly advance, may determine the prices to be charged, but are not liable if a loss is incurred, are provided a desk, telephone use, stationery, and are required to contact furnished leads, to report in during the day, and whose services may be terminated at any time by either party, are employees for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–16, 1976–1 C.B. 311.

40.240 Salespersons; house-to-house. House-to-house salespersons performing services under the direction of a crew manager, who receive company training, are required to meet quotas, work regular hours in assigned territories, and who may not handle competitive merchandise, are employees of the company. However, where the salespersons determine their own methods, hours and territories, are given no leads, have no quotas to meet, file no reports, furnish their own transportation, and are not under the direction of a crew manager are not employees. §§406.203, 408.204. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)

Rev. Rul. 55–734, 1955–2 C.B. 413.

40.241 Salespersons; mortgage loan solicitors and appraisers. Individuals engaged by a mortgage loan company to perform services as solicitors of loan business and as property appraisers, who use the company's office facilities, but furnish their own automobiles, cameras, and tapelines, are remunerated solely by commissions on completed loans, are assigned office duty, and actually spend at least 50 percent of their working time in the company's office, are employees of the company. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–402, 1957–2 C.B. 636.

40.242 Salespersons; residential swimming pools. Commission salespersons of residential swimming pools whose orders are subject to approval by the sales and installation company are not employees of the company for employment tax purposes when selling under agreements that do not require minimum weekly hours, use of prescribed sales routine, reports, office attendance, restriction of sales territory, nor follow-up on company furnished leads; that provide for no supervision or guaranteed compensation; and that require salesmen to pay all their own selling expenses and permit them to adjust selling prices by reducing their commissions. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–479, 1973–2 C.B. 334.

40.243 Salespersons; securities. A licensed securities salesperson who is engaged by an investment firm to sell securities on a commission basis with a guaranteed annual compensation, is furnished a private office on the firm's premises, is required to follow regular office routine and observe customary working hours, is paid for the salesperson's license and is included in several types of insurance which are carried on all employees, is an employee of the firm. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 56–69, 1956–1 C.B. 458.

40.244 Salespersons; securities and real estate. The following rulings discuss whether salespeople, who perform services for investment brokerage, real estate brokerage, or land development companies and who are remunerated solely on a commission basis, are employees for the purposes of the FICA, FUTA, and income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Licensed and registered securities salespeople whose expenses are paid in part by the company, receive a guaranteed draw against commissions, participate in company group insurance programs, and are required by the company to conform to company, regulatory agency, and stock exchange rules, secure company approval on new accounts, have their correspondence reviewed, and maintain certain records are employees. Rev. Rul. 76–136 distinguished. Rev. Rul. 76–138, 1976–1 C.B. 315.

A real estate salesperson who is engaged under a written contract by a land developer, does not have to be licensed, is trained by the company, and is required to devote full time to sales duties, subject to the directions and restrictions imposed by the company, is an employee. Rev. Rul. 76–136 distinguished. Rev. Rul. 76–139, 1976–1 C.B. 318.

40.245 Salespersons; securities and real estate. Rev. Rul. 76–136 and Rev. Rul. 76–137, relating to certain securities and real estate salespeople remunerated solely on a commission basis, are revoked. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–365, 1978–2 C.B. 254.

40.246 Salespersons; services for manufacturers' representative. An individual engaged by a manufacturers' representative under an oral agreement to perform sales services as a "sub-agent" in a specific territory with all sales made in the name of the representative or the firms he represents, who is paid a commission based on a percentage of sales, is allowed a weekly draw, and is required to follow up on furnished leads to prospective customers, reports daily to the representative, submits weekly sales reports, and whose services may be terminated at any time by either party, is an employee of the manufacturers' representative. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–98, 1974–1 C.B. 292.

40.247 Salespersons; tires sold construction contractors. An individual who sells recapped truck tires and new truck tires and tubes for a corporation to owners of fleets of trucks is an employee of the corporation for purposes of the FICA but not FUTA or income tax withholding. §§403.204, 406.203, 408.204. (Secs. 1426, 1607, 1621, '39 Code; Secs. 3121, 3306, 3402, '54 Code.)

Rev. Rul. 54–433, 1954–2 C.B. 337.

40.248 Salespersons; traveling or city. Guides to be used in determining the status of traveling or city salespersons under section 1426(d)(3)(D) of the FICA, are set forth. These guides supplement Mim. 6583 which discusses conditions under which such salespersons are employees, even though they are not employees under the usual common law rules. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–31, 1955–1 C.B. 476.

40.249 Salespersons; vacuum cleaners. Dealers who enter into nonexclusive contracts, terminable at any time, with a distributor to sell the distributor's vacuum cleaners and devices in customers' homes, pay cash for the products or assign acceptable customer contracts, determine theirown hours and territory, may use the distributor's office space or work from home, pay all their selling expenses, furnish their own transportation, are not required to attend meetings or submit reports, are compensated on a commission basis with no guarantee, are furnished with some leads, and have no employee benefits but may receive incentive bonuses, are not employees but are in a trade or business. §§31.3121(d)–1,

31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401, 6015, 6017; '54 Code.)
Rev. Rul. 75–229, 1975–1 C.B. 320.

40.250 Salespersons; yachts and ships. Salespersons engaged by a company to sell yachts and ships listed with it, who agree to perform their services personally, are free to solicit prospective buyers and listings at their own discretion, are not restricted to a specific territory, are not required to work any regular hours or at any specified time, are not required to attend scheduled sales meetings, are paid on a commission basis and who pay all of their own expenses are not employees of the company but are engaged in a trade or business. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 74–389, 1974–2 C.B. 330.

40.251 School bus service contractor; county schools. An individual who contracts to furnish school bus service to a county school district is an independent contractor and the assistants he hires to drive the buses are his employees. Amounts received by the contractor must be considered in computing his net earnings from self-employment. Em. T. 442 superseded. §§1.1402(c)–1, 31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 1402, 3121, 3306, 3402; '54 Code.)
Rev. Rul. 72–175, 1972–1 C.B. 316.

40.252 Services for storage of coal delivered to customers. Individuals engaged by a retail distributing company to store coal and fireplace wood delivered to customers are employees of the company. S.S.T. 416 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 71–169, 1971–1 C.B. 286.

40.253 Sharecroppers. When a farmer agrees to have his land worked by others for a share of the crop, the sharecroppers are self-employed and their share is included in determining their net earnings from self-employment; the farmer's shares are rentals from real estate and excluded from net earnings from self-employment. However, if the sharecroppers do some work for the farmer for a daily or hourly wage, subject to his direction and control, they are employees for purposes of the FICA. (Secs. 1402, 3121; '54 Code.)
Rev. Rul. 55–538, 1955–2 C.B. 313.

40.254 Sharecroppers who only cultivate and harvest a crop. The services of migrant workers who only cultivate and pick an agricultural crop are not excepted from "employment" as share farmers under section 3121(b)(16). §31.3121(b)(16)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 85–85, 1985–1 C.B. 332

40.255 Ship pilots; piloting ships into and out of ports. A bar pilot engaged by a steamship company to pilot a vessel into and out of a port is not, under stated facts, an employee. Em. T. 420 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–338, 1968–1 C.B. 434.

40.256 Ship pilots; piloting ships on rivers in U.S. A pilot engaged by a steamship company to pilot its vessels on a river located completely within the U.S. is, under stated facts, an employee. Em. T. 425 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–339, 1968–1 C.B. 435.

40.257 Special peace officers. Individuals appointed by the Governor of Kentucky to protect property, and who are subject to the property owner's direction and control in the performance of such services, are employees of such property owner for FICA and FUTA purposes. The State, having control of the payment of the officers' wages, is responsible for the income tax withholding. §§406.205, 408.204. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)
Rev. Rul. 55–544, 1955–2 C.B. 401.

40.258 Stenographer; hourly basis for two employers. Where a stenographer works, under a continuing agreement, on an hourly basis for two businessmen at frequent inte. ls, she is an employee of both, and each is liable for the FICA taxes and income tax withholding on the amounts paid for her services. §31.3121(a)–1. (Secs. 3121, 3401; '54 Code.)
Rev. Rul. 57–93, 1957–1 C.B. 328.

40.259 Stonecutters. Stonecutters performing services for the owner of a business that provides the working space and all large equipment, makes all the business arrangements for obtaining the stone and delivering the finished product, supervises the workers to the extent necessary, and may terminate the workers' services at any time are employees of the owner. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 74–110, 1974–1 C.B. 293.

40.260 Store operator collecting utility bills. The operator of a store who receives payment of bills from the customers of a gas and electric company is not an employee of that company. S.S.T. 180 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–446, 1968–2 C.B. 446.

40.261 Student trainee; State programs; placed with private agency. High school students who are placed in training and work programs with private agencies under the vocational educational plan of North Carolina are employees of the training agencies. S.S.T. 356 superseded. §§ 31.3121(d)–1, 31.3306(i)–1, 31. 3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–541, 1968–2 C.B. 456.

40.262 Students; apprenticeship school; union and contractor's association. Preapprenticeship students attending a school established pursuant to an agreement between a local union and contractor's association to finance training of preapprentices and apprentices are not employees. Apprentice students are employees of the contractors to whom they are assigned while attending the school and payments made to them by the educational and training trust fund are wages; the employer-contractors incur liability for FICA and FUTA taxes at the time payments are made by the fund to the apprectices and the fund is required to withhold Federal income tax on such payments. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3504–1. (Secs. 3121, 3306, 3401, 3504; '54 Code.)
Rev. Rul. 69–519, 1969–2 C.B. 185.

40.263 Students; production workers. A manufacturing corporation, upon leasing a building from a college, agreed to employ only students as production workers. Selections and withdrawals of student workers are made by the college. The corporation trains the students, controls the quality and manner of performance of the work, and furnishes all equipment and materials. All remuneration due students for their services is paid by the corporation to the college, which credits it to the students' accounts with the college. *Held.* the students are employees of the manufacturing corporation. Distinguished by Rev. Rul. 64–54. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–500, 1955–2 C.B. 398.

40.264 Substitutes or assistants to skilled workers; records. An employer whose employee or skilled worker engages substitute employees or assistants with the implied consent of the employer is the employer of such substitutes or assistants and must meet the requirements of withholding, filing returns, and recordkeeping with respect to individuals employed. S.S.T. 295 superseded. §§31.3121(d)–1, 31.3401(c)–1, 31.6001–1, 31.6051–1. (Secs. 3121, 3401, 6001, 6051; '54 Code.)
Rev. Rul. 70–447, 1970–2 C.B. 231.

40.265 Supervisors; city housing construction project. Supervisory personnel performing services pursuant to a contract between an architect and the housing authority of a city are employees of the architect. Em. T. 428 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–240, 1968–1 C.B. 429.

40.266 Supervisors and individuals hired by supervisors. The supervisors hired by a person who owns several business establishments and the individuals hired by the supervisors to work in these establishments are all employees of the owner. S.S.T. 35 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–315, 1969–1 C.B. 260.

40.267 Supervisory employee; directing and paying employees. Employees performing services in the department of a company operated by a supervisory employee who pays their wages from remuneration paid to him by the company are employees of the company. S.S.T. 70 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 70–438, 1970–2 C.B. 231.

40.268 Tailor; custom work in home. A tailor performing the unsupervised manufacture of garments in his home for merchant tailors is a home worker employee for purposes of FICA but not for purposes of FUTA or withholding of income tax. S.S.T. 391 and Mim. 5763 revoked. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 72–88, 1972–1 C.B. 319.

40.269 Tailor; manufacturing to order for merchant tailor. A tailor who operates a business establishment of his own, engaging in the manufacture and repair of men's clothing for the general public, is not an employee with respect to services performed in the manufacture of clothing for merchant tailors. S.S.T. 392 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 72–89, 1972–1 C.B. 320.

40.270 Taxicab drivers; cabs purchased from taxi association. Taxicab drivers operating vehicles purchased from a taxicab association under conditional sales agreements requiring specified daily payments but giving the association no right to control their operations are not employees of the association. However, earnings therefrom should be considered for purposes of self-employment tax. S.S.T. 241 superseded. §§1.1402(a)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 71–571, 1971–2 C.B. 347.

40.271 Taxicab drivers; leasing cabs or services. Taxicab drivers who lease their vehicles from a taxicab company in return for a percentage of the fares that they collect are employees of the company. Owners and drivers who lease the services of the company and in the case of nonowner drivers, the vehicles as well, for a fixed amount at regular intervals are not employees of the compa-

ny. Their earnings, however, should be considered for purposes of self-employment tax. Mim. 6652 and Rev. Rul. 66–267 superseded. §§1.1402(a)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–572, 1971–2 C.B. 347.

40.272 Teachers; music conservatory. Teachers performing services as instructors of regular classes at a music conservatory for a regular remuneration are employees of the conservatory; however, teachers who instruct their own pupils in private lessons in return for a percentage of the tuition fees collected by the conservatory, where the conservatory has no control as to the time and manner in which the lessons are given, are not employees. S.S.T. 308 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–338, 1970–1 C.B. 200.

40.273 Teachers; professor on research project. A professor employed to perform teaching services at a state college (designated by the college to carry out a research project under a grant-in-aid to the college by a foundation) and a stenographer engaged by the professor to work on the research project are employees of the college. §§406.203, 408.204. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)

Rev. Rul. 55–583, 1955–2 C.B. 405.

40.274 Teachers; substitute in public schools. An individual engaged in the business of private tutoring who is engaged by a Board of Education as a substitute teacher in public schools is an employee of the Board with respect to services performed as a substitute teacher; income from private tutoring should be considered in determining net earnings from self-employment. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 55–206, 1955–1 C.B. 485.

40.275 Teachers; tutors registered with agency. Tutors that have the right to specify the hourly rates for their services, stipulate their working conditions, determine their schedules, and make their own arrangements as to time and period of instruction, are not employees of the agency that maintains a register of qualified tutors. §§31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 59–104, 1959–1 C.B. 251.

40.276 Telephone directory distributors. An individual engaged by a delivery-service corporation for three or four days in a year to deliver new and pick up old telephone directories, paid on a piece-work basis, using his own means, manner, and methods, and paying his own expenses which may include payments to assistants he hires, is not an employee of the corporation but is engaged in a trade or business. Rev. Rul. 54–459 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–220, 1974–1 C.B. 290.

40.277 Telephone exchange operator; individuals employed. Individuals and their helpers operating telephone exchanges in certain outlying districts under written contracts with telephone companies who have the right to control and direct their activities are employees of the telephone companies. S.S.T. 170 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–442, 1970–2 C.B. 211.

40.278 Telephone services; auto dealers' information service. An individual who maintains in his home a listing of the daily car inventory of each automobile dealer in the area and furnishes such information by telephone to the salesmen of the participating dealers is not an employee of the dealers for FICA purposes; but is subject to self-employment tax. §§39.481–1, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 55–113, 1955–1 C.B. 481.

40.279 Telephone solicitors. An individual who is engaged by a company to solicit orders by telephone from designated individuals and institutions, who is furnished office facilities on the company premises, is expected to work four to eight hours daily, and is paid a commission on each sale, is an employee of the company; however, an individual who is engaged by the company to telephone householders listed in certain pages of the telephone directory to solicit orders, operates from home without supervision, pays all expenses in connection with the activity, is not required to work a certain number of hours, and is paid on a commission basis, is not an employee of the company but is engaged in a trade or business. Rev. Rul. 55–279 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–333, 1974–2 C.B. 328.

40.280 Telephone solicitors. Individuals engaged and trained by a correspondence school to solicit students from a supplied list during specified hours by telephone from their own homes exclusively for and in the name of the school, who are furnished all necessary forms and stationery, are required to complete daily reports, supply and maintain their own telephones, and are paid on an hourly basis are employees for purposes of the FICA, FUTA, and income tax withholding. Rev. Rul. 74–333 distinguished. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–242, 1975–1 C.B. 321.

40.281 Trade embalmers; funeral company. Individuals known as "trade embalmers," engaged only occasionally by a funeral company, who are not required to be on duty or call, are paid a specified sum for each case, furnish their own instruments and fluids, and are not under the direction or control of the company are not employees of the company. S.S.T. 329 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–575, 1970–2 C.B. 223.

40.282 Trainee with private company; part of wages reimbursed by State. Individuals placed in training with a company that is reimbursed by a State for part of their wages are employees of the company; wages of the individuals are computed and reported by the company without regard to the State's reimbursement. S.S.T. 169 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–494, 1968–2 C.B. 432.

40.283 Transcribers; court reporter. Transcribers engaged regularly by a reporting company that furnishes supplies and equipment, stipulates the form, number of copies and completion time of the transcripts, are employees of the company. Em. T. 440 superseded. Transcribers who are employed only occasionally by a court reporter, furnish their own supplies and equipment and perform their services in their homes under no direct supervision, are employees of the reporter for purposes of the FICA but not for purposes of the FUTA or the withholding of income tax. Modified to provide that the above holding will be applied only to wages paid after June 28, 1970. Em. T. 441 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1, 301.7805–1. (Secs. 3121, 3306, 3401, 7805; '54 Code.)

Rev. Rul. 70–339, 1970–1 C.B. 201; Rev. Rul. 70–340, 1970–1 C.B. 202; Rev. Rul. 73–83, 1973–1 C.B. 414.

40.284 Truck drivers; contract for operation and maintenance. An individual is exclusively engaged by a company to operate its delivery trucks, is paid by the company the full amount of the delivery charges collected from the customers, must repay the company the purchase price of the trucks, provide adequate maintenance and insurance coverage, and provide and pay for all helpers. The company retains full control and legal ownership of the trucking equipment. The operator and any helpers engaged to assist him are employees of the company. Rev. Rul. 55–593 distinguished. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–46, 1958–1 C.B. 347.

40.285 Truck drivers; independent contractor; services for airline company. A truck driver performing services for a company under a contract referring to him as an independent contractor, but who is subject to the direction and control of the company, is an employee of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–467, 1972–2 C.B. 539.

40.286 Truck drivers; owner-drivers. Owner-drivers and drivers of rented trucks who contract to deliver merchandise for a company at specified rates, receive no payment for articles not delivered and pay all their operating expenses including insurance coverage, are not employees of the company. The drivers are independent contractors and are employers of any individuals engaged by them to assist in carrying out the terms of the contract. Distinguished by Rev. Rul. 58–46. §§408.204, 408.205. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–593, 1955–2 C.B. 610.

40.287 Truck drivers; truck leasing company. A truck driver is an employee of a truck company leasing tractor-trailer rigs with a driver to a contract carrier and retaining the right to direct and control the driver to the extent necessary to protect its investment. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–524, 1971–2 C.B. 346.

40.288 Truck helpers engaged by employee-drivers. The employee-drivers of a motor freight line company engage local union helpers to unload "drop" freight shipments at points which do not have terminal facilities. The employee-drivers pay such helpers but are subsequently repaid by the company. *Held*, the helpers are employees of the company. §§403.204, 406.203, 408.204. (Secs. 1426, 1607, 1621, '39 Code; Secs. 3121, 3306, 3401, '54 Code.)

Rev. Rul. 55–543, 1955–2 C.B. 400.

40.289 Truck owner-driver and substitute driver; delivery service. A truck owner-driver and his substitute driver who perform delivery services during regular working hours each day for a company that exercises control as to details and manner of performance of the services are employees of the company. S.S.T. 198 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–349, 1969–1 C.B. 261.

40.290 Truck owner-operators; interstate trucking company. Truck owner-operators, engaged under contract by an interstate trucking company, who provide their own equipment, maintenance, and drivers, generally maintain a facility for servicing their equipment, select their own routes, are paid a percentage of the contracting company's receipts for the shipment, and pay

heir licensing fees, road use taxes, and all operating expenses are not employees of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 76–226, 1976–1 C.B. 322.

40.291 Truck owner-operators and assistant drivers; delivery services. Truck owner-operators and their assistant drivers performing delivery services on a temporary basis for a company that has the right to direct and control the manner in which their services are performed are employees of the company. S.S.T. 403 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 70–602, 1970–2 C.B. 225.

40.292 Truck owners and drivers; lease agreements. Truck owners performing services for a company pursuant to a lease agreement which provides that they are directly in the employ of and answerable to the company and substitute drivers engaged by the owners with the express consent of the company are employees of the company. S.S.T. 307 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 70–441, 1970–2 C.B. 210.

40.293 Trustees; bankruptcy. Trustees in bankruptcy who are in charge of the assets of a bankrupt company are not employees of the company. S.S.T. 112 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–500, 1969–2 C.B. 185.

40.294 Trustees; special services. Trustees are employees of the trust with respect to special services they perform for the trust. S.S.T. 408 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 70–661, 1970–2 C.B. 230.

40.295 Visiting nurses working under city health program. A visiting nurse association (an exempt organization) has an agreement with the city under which the association's supervisory personnel work part time on city programs and some of the nursing personnel work full time for the city. The individuals are employees of the city with respect to the services they perform for the city and employees of the association with respect to services performed for the association, for purposes of the taxes under the FICA and the withholding of income tax. §31.3121(d)–1. (Secs. 3121, 3401; '54 Code.)
Rev. Rul. 57–300, 1957–2 C.B. 632.

40.296 Waiters, chefs, etc.; catering services. Certain waiters, chefs, and other individuals employed by a catering company to perform services in connection with the serving of food and refreshments prepared by the company are employees of the company. Em. T. 438 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–624, 1969–2 C.B. 187.

40.297 Waiters engaged by a club to serve private dinners. Certain waiters engaged by a club to serve private dinners given by club members for their guests are employees of the club, even though the wages paid to the waiters are charged to the members' accounts. S.S.T. 183 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–436, 1969–2 C.B. 184.

40.298 Watch repairman; leased department in store. An individual conducting a watch repair business in a jewelry store, paying the jeweler a percentage of receipts as rent, furnishing all his own equipment, regulating his own working hours, fixing his own prices, and doing all repair work in accordance with his own methods, is not an employee of the jeweler. Income derived from such activity should be considered in computing net earnings from self-employment. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 55–248, 1955–1 C.B. 117.

40.299 Well contractors completing wells for well boring company. Individuals who orally contract with a water well boring company operator to pack, grout, and seal operator-bored wells, providing all materials, tools, and equipment, establishing their own work schedules and routines, and reporting only the job completion to the operator are not the operator's employees but are engaged in a trade or business. Rev. Rul. 70–662 distinguished. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 75–15, 1975–1 C.B. 317.

40.300 Window trimmers. Window trimmers engaged by a display company, who are furnished materials and detailed instructions for each display, perform services for the company under its direction and are required to remedy any imperfections in their work, are employees of the company. Em. T. 430 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–479, 1968–2 C.B. 453.

40.301 Wrestlers; contract matches. Wrestlers engaged on a contract basis for each match by a wrestling enterprise that exercises no direction or control over the details of the work performed by the wrestlers, other than to see that they do not break the rules of the State athletic commission embodied in the contract or other specific terms set forth therein, are not employees of the wrestling enterprise. S.S.T. 217 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–225, 1969–1 C.B. 256.

40.302 Writers; engaged to write history of organization. A writer engaged to write the history of an organization on its premises and during its regular work hours is its employee even though he may have considerable latitude in doing the work. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 56–660, 1956–2 C.B. 693.

40.303 Writers; television network. An individual serves a TV network under two contracts as a writer or idea man and as a writer, producer, or director; under one contract, he is given much leeway but is required to produce requested material, to collaborate with others, to meet deadlines, and is paid a salary and royalties; under the other his services, are exclusive to the network, are supervised, and he is paid a salary. The individual is an employee with respect to services performed under both contracts. (Sec. 3121, '54 Code.)
Rev. Rul. 56–130, 1956–1 C.B. 472.

Employer identification number

(See: Identifying number)

Employment

42.1 Banks; liquidating services; New York. Services performed by individuals employed by the superintendent of banks of New York to assist in the liquidation of banking institutions are excepted from employment. However, the estate of each organization for which the superintendent is acting as receiver has the status of an employer, and those individuals who perform services under him or his representatives in carrying on or liquidating the business of such organizations as distinguished from those who act on behalf of the superintendent in a representative capacity are employees of the estate and the services are not excepted from employment. G.C.M. 19865 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 71–68, 1971–1 C.B. 281.

42.2 Beneficiaries of parent's estate; employed by administrator. Minor children of the decedent parent who are beneficiaries of the estate, employed by the administrator in the operation of the business previously carried on by the decedent, are employees of the estate. S.S.T. 129 superseded. §§31.3121(b)–3, 31.3306(c)–2, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 70–307, 1970–1 C.B. 194.

42.3 Blind persons engaged by State agency. Services performed by visually handicapped individuals for the Arizona Industries for the Blind, a wholly-owned instrumentality of the State, are excepted from employment for purposes of the FICA and FUTA. However, wages paid such individuals are subject to income tax withholding. §§406.400, 408.204, 408.214. (Secs. 1426, 1622, '39 Code; Secs. 3121, 3402, '54 Code.)
Rev. Rul. 54–253, 1954–2 C.B. 324.

42.4 Blind persons engaged by State agency. Services performed by visually handicapped individuals for a State Board of Education of the Blind, a wholly owned instrumentality of the State, are excepted from employment for purposes of the FICA and FUTA. However, such individuals are subject to income tax withholding. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 54–254, 1954–2 C.B. 326.

42.5 Canadian agricultural workers. Services perfomed in the U.S. by an agricultural worker brought to this country from Canada are not excepted from employment. §408.208a. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–750, 1955–2 C.B. 424.

42.6 Canadian company's employee in U.S.; U.S. citizen. Remuneration paid by a Canadian company that is not engaged in business in the U.S. and does not maintain any facility, office, or agency in the U.S. to its U.S. citizen employee, who performs all services for the company in the U.S., is wages for purposes of the FICA, FUTA, and withholding of income tax. The provisions of this Revenue Ruling, for purposes of FUTA, will not be applied with respect to wages paid before November 26, 1979. §§31.3121(b)–3, 31.3306(c)–2, 31.3401(a)–1, 301.7805–1. (Secs. 3121, 3306, 3401, 7805; '54 Code.)
Rev. Rul. 79–391, 1979–2 C.B. 352.

42.7 City-owned facility. FICA and FUTA taxes are not applicable to remuneration paid to employees of a city that operates city-owned facilities. These taxes are applicable to remuneration paid to employees of a private corporation that operates city-owned facilities under a lease agreement. In both instances the wages are subject to income tax withholding. S.S.T. 2 and S.S.T. 89 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 68–130, 1968–1 C.B. 424.

42.8 Corporation wholly-owned by a foreign government. Services performed in the U.S. by employees of a corporation wholly-owned by a foreign government are not excepted from employment for FICA and FUTA purposes where the certifications required are not made.

§§31.3121(b)(12)–1, 31.3306(c)(12)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 70–571, 1970–2 C.B. 206.

42.9 County fair association. Services performed by individuals under the jurisdiction of an association, engaged in conducting an agricultural fair for a county, a political subdivision of California, subject to a contract with the county, are excepted from employment. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 57–56, 1957–1 C.B. 308.

42.10 County hospital. A county hospital established and operated pursuant to North Carolina State law through a board of trustees appointed by the board of county commissioners is a wholly owned instrumentality of the county. Services performed in its employ are excepted from employment for purposes of the FICA and FUTA; however, the hospital is responsible for income tax withholding from wages paid its employees. (Sec. 3121, '54 Code.)
Rev. Rul. 56–173, 1956–1 C.B. 480.

42.11 Court-appointed disciplinary commission. Services performed by employees of a disciplinary commission established by a State's high court are excepted from employment for FICA and FUTA purposes, but the wages are subject to income tax withholding. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 74–354, 1974–2 C.B. 326.

42.12 Court reporters and deputies; Florida. Services performed by official court reporters and their deputies appointed under the Florida Statutes Annotated are excepted from employment for FICA and FUTA purposes; however, remuneration for such services is subject to income tax withholding. S.S.T. 318 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 70–528, 1970–2 C.B. 204.

42.13 Drainage construction worker using his own equipment; county work. A construction worker, engaged by a county to repair drainage ditches under the direction and control of the county surveyor, who uses his own mechanical backhoe for which he is paid a specified amount in addition to his hourly wages, is an employee of the county; services performed are excepted from employment for purposes of FICA and FUTA, but wages paid therefor are subject to withholding of income tax. §§31.3121(b)(7)–1, 31.3306(i)–1, 31.3306(c)(7)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 73–576, 1973–2 C.B. 336.

42.14 Employee beneficiary association in Canal Zone. A voluntary employees' beneficiary association organized without capital stock in the Canal Zone pursuant to the Canal Zone Code does not constitute an American employer. Accordingly, services in the employ of the association performed outside the U.S. do not constitute employment. §408.203. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–644, 1955–2 C.B. 425.

42.15 Exempt organization; unrelated business activities. Services performed for a tax-exempt organization described in section 501(c)(3) of the Code by its employees, including services performed in the conduct of its unrelated activities, are excepted from employment for FICA purposes. (Sec. 3121, '54 Code.)
Rev. Rul. 56–188, 1956–1 C.B. 485.

42.16 Father's services for administrator of son's estate. Services performed by a father for the estate of his deceased son are not excepted from employment for FUTA tax purposes. Accordingly, liability for the tax is incurred by the estate with respect to wages paid to the father for such services, provided the estate is an employer. Em. T. 436 superseded. §31.3306(c)(5)–1. (Sec. 3306, '54 Code.)
Rev. Rul 69–659, 1969–2 C.B. 192.

42.17 Federal credit unions. Services performed in the employ of a Federal credit union are not excepted from employment. §§31.3121(b)–1, 31.3306(c)(6)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 67–226, 1967–2 C.B. 354.

42.18 Fire association; Oregon. Services performed in the employ of a fire association organized in Oregon to protect the forest lands of its members are not excepted from employment. S.S.T. 246 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 70–483, 1970–2 C.B. 201.

42.19 Fishing boat crew. None of the services of the mate, engineer, and cook of a fishing boat paid an amount in addition to a share of the catch, or crew members entitled to hourly pay for repair of nets and other incidental work while the boat is in port, are excepted from employment under section 3121(b)(20) and all of their remuneration for the services is subject to FICA and income tax withholding. (Secs. 1402, 3121, 3401; '54 Code.)
Rev. Rul. 77–102, 1977–1 C.B. 299.

42.20 Foreign and home mission boards; ordained minister. Domestic or foreign missionary services performed by an ordained minister, regardless of whether or not such services are performed pursuant to an assignment by ecclesiastical superiors and regardless of the actual types of services performed, are considered to be in the exercise of his ministry and excepted from employment. §408.215. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–471, 1955–2 C.B. 615.

42.21 Foster son and stepdaughter; FUTA. Services performed for an individual by his foster son and stepdaughter, both of whom are under the age of 21, are excepted from employment for purposes of the FUTA. The exception is also applicable to services performed by foster parents for their foster children and stepparents for their stepchildren. S.S.T. 313 superseded. §31.3306(c)(5)–1. (Sec. 3306, '54 Code.)
Rev. Rul. 75–294, 1975–2 C.B. 411.

42.22 Handyman and gardener; hospital rehabilitation program. The owner of a private residence who engages a patient of a hospital under its rehabilitation program as a handyman and gardener and who furnishes the necessary equipment, has the right to instruct the patient as to what services to perform and the manner in which to perform them, is the employer of the patient for FICA purposes. The services performed are domestic services, and the remuneration therefor is not subject to income tax withholding or the tax under the FUTA. However, remuneration for such services is includible in the patient's gross income. Distinguished by Rev. Rul. 66–288 to provide that the value of meals and lodging provided such a patient is not includible in gross income. §§31.3121(d)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 60–149, 1960–1 C.B. 393.

42.23 Homemakers under contract with county. An individual, employed as a homemaker under a separate contract with a county to perform services for disabled welfare recipients, who is subject to the county's direction, supervision, and review, and whose contract may be terminated at any time for failure to fulfill his contractual obligations, is an employee of the county. His wages are subject to income tax withholding; however, they are excepted from employment for FUTA and FICA purposes. Social Security coverage may be obtained only be means of an agreement between the State and the Secretary of Health, Education, and Welfare. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 73–268, 1973–1 C.B. 415.

42.24 Horticultural society. Services performed by employees of a horticultural society, a private corporation organized and incorporated by a special act of the State legislature, are not excepted from employment. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 70–485, 1970–2 C.B. 202.

42.25 Hospital service organization. Services performed in the employ of a cooperative hospital service organization described in section 501(e) of the Code are excepted from employment for purposes of the FICA and the FUTA; however, for purposes of the FICA the exemption may be waived by the organization if it files a waiver certificate, Form SS-15. §§31.3121(b)(8)–2, 31.3306(c)(8)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 74–493, 1974–2 C.B. 327.

42.26 Illegal aliens; agricultural labor. Services performed for farmers in the U.S. by alien workers who illegally entered the country are not excepted from employment for purposes of the FICA. §31.3121(b)(1)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 77–140, 1977–1 C.B. 301.

42.27 Indian tribal business enterprise. A business enterprise organized and operated by an Indian tribe without specific statutory authorization is not an instrumentality wholly-owned by the U.S. Such activity is a tribal enterprise and services performed in its employ are not excepted from employment. (Sec. 3306, '54 Code.)
Rev. Rul. 56–110, 1956–1 C.B. 488.

42.28 Indian ward of U.S. Services performed by an Indian employee are not excepted from employment merely because he is a ward of the U.S. Therefore, wages paid for services performed by an Indian for his employer are subject to employment taxes unless such services fall within the specific exemptions contained in section 3121(b) and 3306(c) of the FICA and FUTA and the employer is also responsible for the withholding of income tax at source. S.S.T. 161 superseded. §§31.3121(b)–3, 31.3306(c)–2, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–493, 1968–2 C.B. 426.

42.29 Individuals; State work program under Manpower Development and Training Act. Participants in a State program, established to provide short-term employment in disaster relief activities for unemployed individuals and funded under the Manpower Development and Training Act of 1962, are employees of the State excepted from employment for purposes of the FICA and FUTA, but the payments made to them are subject to income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 74–413, 1974–2 C.B. 333.

42.30 Individuals engaged by state official. Where a state official is authorized by statute to engage others to assist him in the performance of his official duties, such individuals are employees of the state government agency and the services performed by them are excepted from employment. However, where such official is not authorized by statute to engage others to assist him

n his official duties and individuals are engaged, paid, directed and controlled by the official in the performance of their services, the services are not excepted from employment. §31.3121(b)(7)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 61–21, 1961–1 C.B. 431.

42.31 Inspectors for city; paid by utility companies inspected. Services performed by individuals subject to the exclusive control of the city government as inspectors of utility companies' construction work are excepted from employment under the FICA and FUTA, even though the wages for such services are paid by the utility companies; however, the wages are subject to income tax withholding. S.S.T. 339 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306, '54 Code.)

Rev. Rul. 70–503, 1970–2 C.B. 203.

42.32 Library corporation. A library corporation, operating under the management and supervision of a library board appointed by a city and with funds appropriated by the city, county and state, is a wholly-owned state instrumentality or political subdivision and services performed in its employ are excepted from employment. (Sec. 3121, '54 Code.)

Rev. Rul. 56–89, 1956–1 C.B. 465.

42.33 Lower Colorado River Authority. Services performed by the employees of the Lower Colorado River Authority, organized under the Texas laws, are excepted from employment for FICA and FUTA purposes. However, the wages of the employees are subject to income tax withholding. S.S.T. 127 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402 '54 Code.)

Rev. Rul. 68–444, 1968–2 C.B. 430.

42.34 Magazine subscription salespeople. Services performed by individuals who sell magazine subscriptions door to door on a full-time basis for a publishing company, do not deliver the magazines but merely send in the orders, receive compensation based partly on the number of subscriptions sold, and have the status of employees under the usual common law rules applicable in determining an employer-employee relationship are not excepted from employment. §§31.3121(b)(14)–1, 31.3306(c)(15)–1, 31.3401(a)(10)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–232, 1974–1 C.B. 289.

42.35 Master and crew; fishing vessel. Services performed by the master and crew in the operation of a vessel of nine net tons engaged in carrying individuals to and from fishing grounds where they fish from the vessel are excepted from employment for purposes of the FUTA. However, the remuneration is subject to the withholding of income tax. Em. T. 423 superseded. §§31.3121(b)–3, 31.3306(c)(17)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 69–350, 1969–1 C.B. 271.

42.36 Multi-state insurance associations. An association organized and operated by the heads of the insurance departments of the several states pursuant to express or implied statutory authority for the purpose of performing a governmental function in connection with the administration of state insurance laws is an instrumentality wholly owned by the several states. Accordingly, services performed in its employ are excepted from employment for purposes of the FICA and FUTA. However, remuneration for such services is subject to income tax withholding. §§31.3121(a)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 57–128, 1957–1 C.B. 311.

42.37 Naval cafeteria association. A cafeteria association organized and operated under Navy Department regulations for the purpose of providing in-plant feeding services for civilian employees of a Naval shore establishment is an instrumentality wholly owned by the U.S. and services performed in its employ are excepted from employment for FUTA purposes. Remuneration for services performed by such employees is includible in gross income. §31.3306(c)(6)–1. (Secs. 61, 3306; '54 Code.)

Rev. Rul. 58–527, 1958–2 C.B. 741.

42.38 Navy physician and medical personnel assigned to U.S. Capitol. Allowances paid under the Legislative Branch Appropriations Acts to the Attending Physician in the U.S. Capitol and medical personnel assigned to assist that individual, all of whom are members of the U.S. Navy who are receiving regular Navy pay, are includible in their gross incomes under section 61 and subject to income tax withholding. The allowances are excepted from employment for FUTA purposes. Whether the allowances are wages subject to FICA is to be determined by the head of the Department of Navy. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(a)–1. (Secs. 61, 3121, 3306, 3402; '54 Code.)

Rev. Rul. 78–432, 1978–2 C.B. 69.

42.39 Nonprofit municipal league. A municipal league, a private nonprofit corporation, which has not been designated as an agent or instrumentality by any municipal corporation, and whose activities are governed by its board of trustees, with no control and supervision vested in any public authority, is not a wholly-owned instrumentality of political subdivisions of the state of incorporation, and services performed in its employ are not excepted from employment. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 65–26, 1965–1 C.B. 444.

42.40 Nonresident alien crew members; fishing vessel. Services performed on the high seas by nonresident alien crew members hired in a foreign country by a U.S. commercial fishing vessel of more than 10 net tons, having a usual crew of 16, and that stops during its voyage at a U.S. port for fuel and supplies constitute "employment." However, amounts paid to the nonresident alien crew members are not wages subject to income tax withholding. §§31.3121(b)–3, 31.3306(c)–2, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–216, 1978–1 C.B. 305.

42.41 Outside U.S.; credit union; military base. Services performed after 1971 by U.S. citizens for a credit union operating on a U.S. military base in a foreign country are not excepted from employment for purposes of the FUTA. Rev. Rul. 70–310 modified. (Sec. 3306, '54 Code.)

Rev. Rul. 76–72, 1976–1 C.B. 326.

42.42 Outside U.S.; credit union; U.S. military base. Services performed by U.S. citizens as employees of a credit union operating on a U.S. military base in a foreign country are not excepted from employment for purposes of FICA, but are excepted for purposes of the FUTA. §§31.3121(h)–1, 31.3306(c)–2. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 70–310, 1970–1 C.B. 209.

42.43 Pennsylvania State Board of Law Examiners. Services performed by employees of the Pennsylvania State Board of Law Examiners are excepted from employment for FICA and FUTA purposes; however, the remuneration for such services is subject to income tax withholding. S.S.T. 171 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–412, 1968–2 C.B. 428.

42.44 Pilot and truck drivers; aerial crop dusting. The application to FICA, FUTA, and withholding of income tax is discussed with respect to services performed by a truck driver and a pilot for a firm engaged in aerial crop dusting and spraying. Rev. Rul. 54–574 superseded. §§31.3121(d)–1, 31.3121(g)–1, 31.3306(i)–1, 31.3306(k)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–583, 1968–2 C.B. 459.

42.45 Police officers; duties at city theater. Services performed by city police officers assigned by the city to a theater owned by an amusement company that pays their wages for the services are excepted from employment for purposes of FICA and FUTA, but the wages are subject to income tax withholding. S.S.T. 327 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 70–504, 1970–2 C.B. 204.

42.46 Police officers; off-duty; traffic control at bank. Off-duty policemen who volunteer for assignment to direct traffic at a bank auto drive-in facility, who are controlled by the police department, and who are paid by the city from the bank's payments to the police department for the service, are employees of the city excepted from employment under the FICA and FUTA but their pay is subject to income tax withholding. §§31.3121(b)(7)–1, 31.3121(d)–1, 31.3121(d)–2, 31.3306(a)–1, 31.3306(c)(7)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–162, 1974–1 C.B. 297.

42.47 Political campaign worker. Cash remuneration of less than $50 during a calendar quarter paid to a campaign worker for his services by a political candidate for election or reelection is not wages for purposes of FICA and income tax withholding. The services performed for him are not employment for purposes of FUTA. However, if the candidate forms a corporation to conduct the campaign, remuneration received from the corporation and services performed are not excepted from wages and employment. S.S.T. 312 superseded. §§31.3121(a)(7)–1, 31.3306(c)(3)–1, 31.3401(a)(4)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–202, 1972–1 C.B. 314.

42.48 Public power district employees; Nebraska. Services performed by the employees of a public power district organized under Nebraska law are excepted from employment for purposes of the FICA and FUTA; however, the remuneration for such services is subject to income tax withholding. S.S.T. 94 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–171, 1968–1 C.B. 425.

42.49 Race track stewards. Race track stewards who are licensed by a State horse racing board, act as the board's representatives at approved race meetings, and are subject to discharge by the board are considered employees of the State agency and are excepted from employment. The remuneration for their services is not subject to FUTA and FICA taxes. Social Security coverage may be obtained only by means of an agreement between the State and the Secretary of Health, Education, and Welfare. For income tax withholding purposes, they are considered employees of the racing association that controls the payment for their services. §§31.3121(b)(7)–1, 31.3121(d)–1, 31.3306(c)(7)–1, 31.3306(i)–1,

31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 73–253, 1973–1 C.B. 414.

42.50 Registered nurse employed by a hospital; student in specialized program. The services of a registered nurse who is employed full-time by a hospital are not excepted from employment for FICA and FUTA purposes even though the nurse is also enrolled and regularly attending classes in a specialized program at a nurses' training school. §§31.3121(b)(13)–1, 31.3306(c)(13)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 85–74, 1985–1 C.B. 331

42.51 Share farming; migrant workers who only cultivate and harvest a crop. The services of migrant workers who only cultivate and pick an agricultural crop are not excepted from "employment" as share farmers under section 3121(b)(16). §31.3121(b)(16)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 85–85, 1985–1 C.B. 332.

42.52 Soil and water conservation district; Connecticut. A Connecticut soil and water conservation district formed as a private nonstock corporation by landowners who have complete control over its operations is not a wholly-owned instrumentality or political subdivision of the State. Therefore, services performed in the employ of the district are not excepted from employment. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 69–453, 1969–2 C.B. 182.

42.53 Sports Area Commission. A Sports Area Commission, created pursuant to an agreement between a city and two villages to provide recreational facilities for residents, is an instrumentality wholly owned by one or more political subdivisions of the state. Therefore, services performed in the employ of the Commission are excepted from employment under the FICA and FUTA. However, the remuneration for such services is subject to income tax withholding. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 65–196, 1965–2 C.B. 388.

42.54 State port districts; Washington. Port districts organized under the statutes of the State of Washington are political subdivisions of the State and neither such districts nor their employees are subject to FICA and FUTA. However, the remuneration of their employees is subject to income tax withholding. S.S.T. 98 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 68–366, 1968–2 C.B. 427.

42.55 State soil conservation district. A soil conservation district organized and operated under Minnesota law for purposes of carrying out a state soil conservation program is a political subdivision of the state and services performed in its employ are excepted from employment under the FICA and FUTA; individuals furnished by the Soil Conservation Service of the Department of Agriculture to the district are employees of such Service, and no liability is incurred by the district under the Acts with respect to their services. However, the district is responsible for withholding income tax from wages paid its employees. §§31.3121(a)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 57–120, 1957–1 C.B. 310.

42.56 Students; domestic services; university women's club. Domestic services performed by university students for a university women's club whose membership consists of the faculty and administration members, employees of affiliated organizations and family members of each group are not excepted from employment. S.S.T. 407 superseded. §§31.3121(b)(2)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 72–174, 1972–1 C.B. 315.

42.57 Students; employed by university; summer vacation. Services performed for a university by a student during the summer vacation between two academic years while not enrolled or regularly attending classes, are not excepted from employment for purposes of the FICA if he earns $50 or more in the calendar quarters of the summer vacation. S.S.T. 404 superseded. §31.3121(b)(10)–2. (Sec. 3121, '54 Code.)
Rev. Rul. 72–142, 1972–1 C.B. 317.

42.58 Students; summer music camp. Even though a camp which qualifies as a "school, college, or university" waives its exemption from tax under the FICA, services performed for it by its students who are enrolled and are regularly attending classes are excepted from employment and the camp is not liable for the taxes imposed by the Act with respect to the remuneration for such services. (Sec. 3121, '54 Code.)
Rev. Rul. 56–87, 1956–1 C.B. 463.

42.59 Students; university employees; excepted services. Services perfomed by a graduate student registered for two courses totaling 6 hours of credit out of a maximum of 18 and employed full time by a university that has waived its exemption from FICA is not excepted from employment under section 3121(b)(10). However, the services of a graduate student employed 15 hours a week and registered for four courses totaling 12 credits, and the services of a graduate student employed 6 hours a week while working on a dissertation following completion of required course work and registered at the university for dissertation advisement, are excepted. §31.3121(b)(10)–2. (Sec. 3121, '54 Code.)
Rev. Rul. 78–17, 1978–1 C.B. 306.

42.60 Students; university employees; summer study and research. Services performed by graduate students and research assistants who work for a university that has waived its exemption from FICA taxes and who use the summer vacation for independent study and research, and during that time are not enrolled or regularly attending classes, are not excepted from employment in each summer calendar quarter that they are paid $50 or more. §31.3121(b)(10)–2. (Sec. 3121, '54 Code.)
Rev. Rul. 74–109, 1974–1 C.B. 288.

42.61 Termination; departing U.S. alien; refund of FICA tax. An alien who, after performing services in employment in the U.S., returns to his home country with no intention of performing such services again, has no right to a refund of FICA tax. S.S.T. 216 superseded. §31.3121(b)–3. (Sec. 3121, '54 Code.)
Rev. Rul. 70–437, 1970–2 C.B. 200.

42.62 Transit authority. Services performed by individuals who became employees of a regional transit authority and received coverage under the State's retirement system when the authority acquired a privately owned transit company do not constitute "covered transportation service" within the meaning of section 3121(j)(3) of the Code and are excepted from employment under section 3121(b)(7). Social Security coverage may be obtained only by an agreement between the State and the Secretary of Health, Education, and Welfare. §§31.3121(b)(7)–1, 31.3121(j)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 73–352, 1973–2 C.B. 324.

42.63 Transit authority. A transit authority was created as a political subdivision of a state in 1965. The authority covered its employees for social security purposes by means of an agreement with HEW under section 218 of the Social Security Act. In 1972 the authority acquired a private transit company, which was its first acquisition from private ownership of any part of its system, and all of the company's employees became employees of the authority. At the time of the acquisition there was no general retirement system covering the employees of the authority, and the services performed by all of its employees became "covered transportation service" within the meaning of section 3121(j). §§31.3121(b)(7)–1, 31.3121(j)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 80–149, 1980–1 C.B. 213.

42.64 Truck driver; Canadian citizen. Services performed within the U.S. by a Canadian citizen employed as a truck driver by a Canadian company are employment for purposes of section 3121(b). §31.3121(b)–3. (Sec. 3121, '54 Code.)
Rev. Rul. 79–318, 1979–2 C.B. 352.

42.65 Truck drivers; Canadian residents. Remuneration paid to residents of Canada who are not citizens of the U.S. and who, in performing services as truck drivers, enter and leave the U.S. at frequent intervals, is not subject to income tax withholding. However, such remuneration is subject to FICA taxes. §§31.3121(b)–3, 31.3401(a)(7)–1. (Secs. 3121, 3401; '54 Code.)
Rev. Rul. 66–77, 1966–1 C.B. 242.

42.66 Volunteer fire departments; Pennsylvania. Services performed by employees of volunteer fire departments organized under the laws of Pennsylvania are excepted from employment for purposes of the FICA and FUTA; however, wages paid such employees are subject to income tax withholding. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 70–484, 1970–2 C.B. 201.

42.67 Water improvement district; Texas. Services performed by employees of water improvement districts organized under the Texas statutes are excepted from employment for FICA and FUTA purposes; however, remuneration for such services is subject to income tax withholding. S.S.T. 159 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)
Rev. Rul. 68–495, 1968–2 C.B. 433.

Enrollment
(See: Attorneys and agents)

Evasion of tax
(See: Fraud)

Evidence
(See: Criminal prosecutions; Suits)

Examination of records or returns
(See: Books and records; Returns)

Exempt organizations

44.1 Change in entity. Where there is a change in organization entity and all the conditions of section 403(a) of the Social Security Amendments of 1954 regarding waivers of exemption are not met, the organization's employees are precluded from the benefits of that section. §408.216. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 56–121, 1956–1 C.B. 667.

.2 Employee annuity purchased; Form -2. Amounts reportable as wages on Form -2 for income tax withholding purposes by a tion 501(c)(3) organization that purchases an nuity, including life insurance protection, for an nployee pursuant to a salary reduction agree- ent must include that portion of the annuity yment attributable to the purchase of current e insurance and any amount in excess of the nployee's exclusion allowance. However, for CA tax purposes the entire amount must be re- rted, subject to the annual wage limitation. 1.6051-1. (Sec. 6051, '54 Code.)

Rev. Rul. 70-453, 1970-2 C.B. 287.

4.3 Exempt and nonexempt joint owners. int ownership of an office building by a tax-ex- npt organization and by a nonexempt organiza- on results in the creation of a nonexempt part- rship, and wages paid for services performed for e partnership are not exempt from employment xes. §§39.3797-4, 403.215, 408.216. (Secs. 1426, 07, 3797, '39 Code; Secs. 3121, 3306, 7701, '54 ode.)

Rev. Rul. 54-369, 1954-2 C.B. 364.

4.4 Extent of liability; FICA and FUTA. rocedures are outlined with respect to the appli- ation of FICA and FUTA taxes to remuneration r services performed on and after January 1, 955, in the employ of certain exempt organiza- ons. §§31.3121(b)(8)-2, 31.3306(c)(8)-1. Secs. 3121, 3306; '54 Code.)

Rev. Proc. 57-29, 1957-2 C.B. 1099.

4.5 Federal credit unions. Services per- ormed in the employ of a Federal credit union re not excepted from employment for FICA, UTA, or income tax withholding purposes. §31.3121(b)-1, 31.3306(c)(6)-1, 31.3402(a)-1. Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 67-226, 1967-2 C.B. 354.

4.6 Fraternity house employees; meals nd lodging. The value of living quarters and neals furnished to nonstudents who perform ousekeeping services in or about a local chapter ouse of an exempt college fraternity constitutes vages. Modified by Rev. Rul. 81-222. §408.218, 08.227. (Sec. 1426(b), '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55-631, 1955-2 C.B. 619.

4.7 Hospital service organization; waiver of exemption from FICA taxes. Services per- formed in the employ of a cooperative hospital service organization described in section 501(e) of the Code are excepted from employment for pur- poses of the FICA and the FUTA; however, for purposes of the FICA the exemption may be waived by the organization if it files a waiver cer- tificate, Form SS-15. §§31.3121(b)(8)-2, 31.3306(c)(8)-1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 74-493, 1974-2 C.B. 327.

44.8 Hospitals incorporated; social securi- ty coverage for employees; waiver certifi- cates. A tax-exempt hospital formed to take over the operations of three other tax-exempt hospitals, including their employees, may not rely on the waiver certificates, Form SS-15 and Form SS-15a, filed by the three hospitals to extend so- cial security coverage to their respective employ- ees, but must file its own waiver certificates for continuance of coverage. §§31.3121(a)(1)-1, 31.3121(b)(8)-2, 31.3121(k)-1. (Sec. 3121, '54 Code.)

Rev. Rul. 71-276, 1971-1 C.B. 289.

44.9 Liability for withholding on proceeds of a lottery. In addition to the normal informa- tion reporting requirements of section 6041, an organization exempt from tax under section 501(c)(3) is also subject to the withholding re- quirements of section 3402(q)(1) if the organiza- tion pays lottery winnings of more than $1,000. §31.3402(q)-1. (Sec. 3402, '54 Code.)

Rev. Rul. 85-46, 1985-1 C.B. 334.

44.10 Mandatory social security coverage for employees. Social security coverage for em- ployees of organization described in section 501(c)(3) is mandatory and not elective with re- spect to services performed after December 31, 1983. Rev. Proc. 67-35, which sets forth the pro- cedures for election of coverage for those employ- ees, is obsolete, effective with respect to services performed after December 31, 1983. §§31.3121(b)(8)-2, 31.3121(k)-1. (Sec. 601.401, S.P.R.; Sec. 3121, '54 Code.)

Rev. Proc. 84-40, 1984-1 C.B. 515.

44.11 Meals and lodging furnished em- ployees. An exempt nonprofit charitable organi- zation that has waived its exemption from social security tax should include the fair value of living quarters and meals furnished to its employees in computing their wages. Modified by Rev. Rul. 81-222. §§408.216, 408.227. (Sec. 1426(1), '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55-630, 1955-2 C.B. 616.

44.12 Religious organization; services pri- or to exemption. A religious organization that applies for recognition of its status more than 15 months from the end of the month in which it is organized will not be treated as a section 501(c)(3) organization for the period before its application was filed and services performed by its employees during that period are not excepted from employment for FICA and FUTA purposes. §§31.3121(b)(8)-2, 31.3306(c)(8)-1. (Secs. 508, 3121, 3306; '54 Code.)

Rev. Rul. 76-262, 1976-2 C.B. 310.

44.13 Sheltered workshop for blind; em- ployer-employee relationship. Blind individu- als who are being trained in a charitable organiza- tion's sheltered workshop under a program of rehabilitation are not employees of the organiza- tion; blind individuals who, after completion of training, are working in the workshop either tem- porarily while awaiting placement in industry or permanently because they are unable to compete in industry, are employees; and blind individuals who are incapable of rehabilitation and who are furnished materials by the organization on which they may work at home whenever they please are not considered employees where they are free to sell the completed articles either to the public or to the organization. §§31.3121(d)-1, 31.3306(c)(8)-1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 65-165, 1965-1 C.B. 446.

44.14 Social security coverage for em- ployees; validation. Procedure for validating so- cial security coverage for certain employees of churches, church denominations, church affiliated organizations, or missionary organizations who have erroneously reported wages as self-employ- ment income. §§1.1402(e)(1)-1, 31.3121(b)(8)-1, 31.3121(k)-1. (Secs. 601.401, S.P.R.; Secs. 1402, 3121, '54 Code.)

Rev. Proc. 67-43, 1967-2 C.B. 684.

44.15 Social security coverage for teach- ers; waivers. In determining whether the requi- site two-thirds of its employees concur in the filing of waiver certificate Form SS-15 to obtain social security coverage for its employees, an exempt school should include only those teachers who are in an employment relationship as of the filing date of the certificate; accordingly, where such waiver is filed between school years, teachers engaged by oral agreement to teach from year to year on a continuing basis should be included for purposes of this determination, but those, so engaged only for the school year should not be included. §31.3121(d)-1. (Sec. 3121, '54 Code.)

Rev. Rul. 60-114, 1960-1 C.B. 389.

44.16 Summer music camp. Even though a camp which qualifies as a "school, college, or uni- versity" waives its exemption from tax under the FICA, services performed for it by its students who are enrolled and are regularly attending classes are excepted from employment and the camp is not liable for the taxes imposed by the Act with respect to the remuneration for such services. (Sec. 3121, '54 Code.)

Rev. Rul. 56-87, 1956-1 C.B. 463.

44.17 Unrelated business activities. Serv- ices performed for a tax-exempt organization de- scribed in section 501(c)(3) of the Code by its employees, including services performed in the conduct of its unrelated activities, are excepted from employment for FICA purposes. (Sec. 3121, '54 Code.)

Rev. Rul. 56-188, 1956-1 C.B. 485.

44.18 Visiting nurse association; city health program. A visiting nurse association has an agreement with the city under which the asso- ciation's supervisory personnel work part-time on city programs and some of the nursing personnel work full time for the city. The individuals per- forming services for the association on a part-time basis are its employees and should be counted in determining whether the requisite number of em- ployees concur in the filing of a waiver certificate. Those who work full time for the city are employ- ees of the city and should not be counted by the association in making such determination. §31.3121(d)-1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 57-300, 1957-2 C.B. 632.

44.19 Wages; purchase of employee annu- ities. An amount paid by an exempt organization for the purchase of a retirement annuity contract on behalf of an employee does not constitute wag- es subject to withholding for employment and in- come tax purposes. Distinguished by Rev. Rul. 65-208. §§405.107, 408.227. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)

Rev. Rul. 181, 1953-2 C.B. 111.

44.20 Wages; purchase of employee annu- ities. An exempt organization established a sup- plemental annuity plan, under which an employee agreed to a salary reduction to provide funds for the purchase of a nontransferable annuity con- tract in his behalf. The employee could make only one agreement during any taxable year and it ap- plied only to amounts earned subsequent to the effective date of the agreement. The amounts used to purchase the annuity contract are wages for FICA purposes, but are not subject to income tax withholding. Rev. Rul. 181 distinguished. §31.3121(a)-1. (Sec. 3121, '54 Code.)

Rev. Rul. 65-208, 1965-2 C.B. 383.

44.21 Waiver certificate; constructive fil- ing. An exempt organization that began with- holding FICA taxes from its employees at the be- ginning of the year and filed Forms 941 and paid the tax for the first three quarters during the fourth quarter is deemed to have filed a waiver certificate. §§31.3121(b)(8)-2, 31.3121(k)-1. (Sec.3121, '54 Code.)

Rev. Rul. 80-337, 1980-2 C.B. 296.

44.22 Waiver certificate; exempt associa- tion incorporated. A tax exempt corporation formed to takeover the operations of an exempt unincorporated association is a new organization for purposes of filing a waiver certificate. §§31.3121(b)(8)-2, 31.3121(k)-1. (Sec. 3121, '54 Code.)

Rev. Rul. 77-159, 1977-1 C.B. 302

44.23 Waiver certificate; filing before exemption established. Forms SS–15 and SS–15a, filed in 1961 by a nonprofit charitable organization to waive its exemption from social security taxes pursuant to section 3121(k) were valid when filed even though the organization did not file an application for recognition of its Section 501(c)(3) status until 1976. §§31.3121(b)(8)–2, 31.3121(k)–1. (Secs. 501, 3121; '54 Code.)

Rev. Rul. 77–315, 1977–2 C.B. 355.

44.24 Waiver certificate; termination. A private nonprofit school whose employees' services are excepted from employment under section 3121 (b)(8)(B) of the FICA and which has had a waiver of its exemption in effect for three years is not entitled to terminate its waiver certificate under section 3121(k)(1)(D) or (k)(2) for budgetary considerations or because its employees desire to participate in a tax-sheltered annuity plan. §§31.3121(b)(8)–2, 31.3121(k)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 74–415, 1974–2 C.B. 337.

44.25 Waiver certificate; termination. A section 501(c)(3) organization that has given written notice requesting the immediate termination of its waiver certificate under the FICA in order to secure funds for the establishment of an alternative retirement plan for its employees may not terminate the waiver, which has been in effect for more than 10 years, until the required 2 years' advance notice period has elapsed. This conclusion would be the same even if the organization had not actually filed a waiver certificate, but was deemed to have done so under section 3121(k)(4) or (k)(5) of the FICA. §31.3121(k)-1. (Sec. 3121, '54 Code.)

Rev. Rul. 78-7, 1978-1 C.B. 307.

44.26 Waiver certificate; termination; effective date. Methods are set forth to be used by a nonprofit organization to amend the effective date for terminating its waiver of exemption from social security taxes. (Sec. 601.104, S.P.R.)

Rev. Proc. 82–57, 1982–2 C.B. 846.

44.27 Waivers; retroactive coverage. An employee of an organization exempt under section 501(a) of the Code which filed a valid certificate waiving its exemption from FICA taxes prior to the enactment of the Social Security Amendments of 1956 is not precluded from obtaining retroactive social security coverage under section 403(a) of such amendments. §31.3121(k)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 58–270, 1958–1 C.B. 356.

Extension of time

46.1 Filing; failure to pay penalty. The penalty imposed by section 6651 of the Code for failure to pay tax timely, will be applied after November 24, 1975, to any Federal tax for which a taxpayer is granted an extension of time to file a return. §301.7805–1. (Secs. 6081, 6151, 6161, 7805; '54 Code.)

Rev. Rul. 75–364, 1975–2 C.B. 466.

46.2 Form W–2; employment terminated during year. Employers were allowed additional time to furnish Forms W–2 in 1974 to employees whose employment was terminated during the year. §31.6051–1. (Sec. 601.401, S.P.R.; Sec. 6051, '54 Code.)

Rev. Proc. 74–15, 1974–1 C.B. 437.

46.3 Form W-2; employment terminated in 1975. The requirement that employers furnish Forms W-2 within 30 days after last payment of wages to persons leaving their employ during a calendar year was waived until March 31 for employees terminated in 1975 and paid on or before March 1. §31.6051–1. (Sec. 601.401, S.P.R.; Sec. 6051, '54 Code.)

Rev. Proc. 75–19, 1975–1 C.B. 687.

46.4 Limitation period; assessment; authority to sign consent. Factual situations illustrate which individuals are authorized to sign consents to extend the time for the assessment of tax. §§301.6061–1, 301.6501(c)–1. (Secs. 6061, 6501; '54 Code.)

Rev. Rul. 83–41, 1983–1 C.B. 349.

46.5 Limitation period; Form 872–A; assessments. Conditions are set forth with respect to the acceptance by Appeals officials and District Directors of Internal Revenue of Form 872–A, Special Consent to Extend the Time to Assess Tax. Form 872–A, accepted in place of Form 872, relieves taxpayers and the Service from the inconvenience of obtaining renewal consents. Rev. Proc. 71–11 superseded. §301.6501(c)–1. (Sec. 601.105, S.P.R.; Sec. 6501, '54 Code.)

Rev. Proc. 79–22, 1979–1 C.B. 563.

46.6 Returns; information; relief under section 530 of the Revenue Act of 1978. A taxpayer did not treat certain individuals as employees on its Form 941, Employer's Quarterly Federal Tax Return, and did not file timely Forms 1099-NEC, Statement for Recipients of Nonemployee Compensation. Upon audit and after the deadline for filing Forms 1099-NEC, the taxpayer filed them. The taxpayer was not entitled to relief under section 530 of the Revenue Act of 1978. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401, 6041, 6081; '54 Code.)

Rev. Rul. 81–224, 1981–2 C.B. 197.

Family employment

48.1 Beneficiaries of parent's estate; employed by administrator. Minor children of the decedent parent who are beneficiaries of the estate, employed by the administrator in the operation of the business previously carried on by the decedent, are employees of the estate. S.S.T. 129 superseded. §§31.3121(b)–3, 31.3306(c)–2, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 70–307, 1970–1 C.B. 194.

48.2 Domestic services. In determining whether a bona fide employment relationship exists in those cases where a member of one's family performs domestic services in his home, for FICA purposes, the existence of a contract of employment, the dependency status of the alleged employee, the work history of the alleged employee, and the details of remuneration paid, are major factors to be considered. §408.227. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 135. 1953–2 C.B. 306.

48.3 Domestic services; farm home. An individual who performs domestic services in her brothers' private home located on a farm, is subject to their direction and control in the performance of her services, may be discharged by them for failure to perform her duties, and is paid for such services by check on a quarterly basis, is an employee of her brothers for FICA purposes. Such services performed on the farm operated for profit by her brothers constitute agricultural labor. §§408.204, 408.208. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–521, 1954–2 C.B. 355.

48.4 Father's services for administrator of son's estate. Services performed by a father for the estate of his deceased son are not excepted from employment for FUTA tax purposes. Accordingly, liability for the tax is incurred by the estate with respect to wages paid to the father for such services, provided the estate is an employer. Em. T. 436 superseded. §31.3306(c)(5)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 69–659, 1969–2 C.B. 192.

48.5 Foster son and stepdaughter; FUTA. Services performed for an individual by his foster son and stepdaughter, both of whom are under the age of 21, are excepted from employment for purposes of the FUTA. The exception is also applicable to services performed by foster parents for their foster children and stepparents for their stepchildren. S.S.T. 313 superseded. §31.3306(c)(5)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 75–294, 1975–2 C.B. 411.

48.6 Housekeeper and nurse-companion for brother. A bona fide employer-employee relationship, rather than a family dependency arrangement, exists where a brother engages his sister, who is independent of his financial support, to act as housekeeper and companion and to perform minor nursing services in his home during regular hours and according to his instructions. §§408.204, 408.226, 408.227. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–572, 1954–2 C.B. 341.

48.7 Partnership; members of partners' families. Members of partners' families employed by a partnership, in addition to other employees, must be counted as employees in determining whether the partnership is an employer of four or more individuals for purposes of FUTA. The family members are to be counted whether or not they receive remuneration for their services. §31.3306(c)(5)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 70–402, 1970–2 C.B. 232.

Federal services

(See also: Instrumentalities)

50.1 Accumulated annual leave; lump-sum payments. A lump-sum payment for unused accumulated annual leave, paid separately to an individual leaving the Federal service, is a supplemental wage payment for income tax withholding purposes. Where the employing agency combines regular wages and the amount due for accumulated annual leave, the tax to be withheld is determined under the standard wage bracket or percentage method. §1.3402(g)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 67–131, 1967–1 C.B. 291.

50.2 Accumulated annual leave; lump-sum payments refunded. The gross income, reported by a Federal employee who received a lump-sum annual leave payment from one agency and repaid a portion of it when reemployed by another agency in the same taxable year, may be adjusted to reflect the repayment and a copy of the agency receipt for the repayment should be attached to reconcile the amounts subject to withholding shown on the Forms W-2. I.T. 3969 superseded. §§31.3401(a)–1, 31.6051–1. (Secs. 61, 451, 3401, 6051; '54 Code.)

Rev. Rul. 75–531, 1975–2 C.B. 31.

50.3 Armory custodian. An individual, awarded a contract to serve as a Federal armory custodian, furnishes all necessary equipment, supplies, and labor required to perform the tasks and to maintain Army standards of cleanliness and sanitation as specified in the contract, assumes responsibility for personal injury or property damage suits and his work is inspected by the commanding officer of the armory, is not an employee of the Federal Government, but is engaged in a trade or business, the income from which is includible in computing net earnings from self-employment. Distinguished by Rev. Ruls. 68–460 and 68–461. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–90, 1960–1 C.B. 387.

.4 Contract examination monitor and unselor. An individual who performs services an examination monitor and counselor for a deral agency, which has determined under the ovisio ns of section 3122 of the FICA that the ividual is not an employee but whose contract ecifies the place of work, the hours of work, the neral working procedures to be followed, and e right to approve substitutes and dismiss the ividual is an employee of the agency, and is not gaged in a trade or business for purposes of the f-employment tax. The remuneration is subject income tax withholding, but is not subject to e FICA or FUTA. Rev. Ruls. 147 superseded d 56–615 modified. §§1.1402(c)–1, .3121(d)–1, 31.3306(c)(6)–1, 31.3306(i)–1, .3401(c)–1. (Sec. 1402, 3121, 3122, 3306, 3401; Code.)

Rev. Rul. 75–343, 1975–2 C.B. 402.

.5 Contract mail carrier. An individual ho contracts for the delivery of mail is an inde- ndent contractor and not an employee of the S. Government nor is he an instrumentality of e U.S. Individuals he hires are his employees d they are subject to FICA, FUTA, and income x withholding. S.S.T. 205 superseded. 31.3121(b)(6)–1, 31.3306(a)(6)–1, .3402(a)–1. (Secs. 3121, 3306, 3402; '54 ode.)

Rev. Rul. 69–362, 1969–1 C.B. 254.

.6 Cost-of-living allowances; civilians utside U.S. Cost-of-living allowances paid to rtain civilian employees of the U.S. Government ationed outside the U.S. are not wages subject to e withholding of income tax. Whether such al- wances are wages subject to the FICA is to be etermined by the head of the Government agen- involved. §§406.207, 406.226. (Secs. 1420, 426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)

Rev. Rul. 54–40, 1954–1 C.B. 222.

.7 Court reporters; Federal and state. ees received by Federal Court reporters and offi- al state reporters from the preparation and sale f official transcripts represent income from a ade or business, such activity being aside from eir basic duties for which they receive a statuto- y wage. Therefore, such income is includible in omputing net earnings from self-employment. 1.1402(a)–1. (Secs. 1402, 3122; '54 Code.)

Rev. Rul. 58–360, 1958–2 C.B. 423.

.8 Domestic Volunteer Service Act pay- ents. Payments for supportive services or reim- ursements of out-of-pocket expenses made to olunteers serving in programs pursuant to titles I and III of the Domestic Volunteer Service Act f 1973 are not wages for FICA and income tax ithholding purposes. Amplified by Rev. Rul. 8–80. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 121, 3401; '54 Code.)

Rev. Rul. 74–322, 1974–2 C.B. 17.

.9 Erroneous salary payments; Form V–2. Erroneous salary payments to Federal em- loyees, the collection of which is waived by law, nust be reflected in the employees' Form W–2 for he year such erroneous payment is made to the xtent there has been no repayment of such mount by the employees within that year. Fur- her, where such amount has been repaid and later efunded to the employees, it is not again subject o withholding of income tax. This will not be pplied to require any employer agency to correct Form W–2 for any year prior to 1969 under ertain conditions. §§31.3402(a)–1, 31.6011(a)–4, 31.6051–1, 301.7805–1. (Secs. 402, 6011, 6051, 7805; '54 Code.)

Rev. Rul. 70–177, 1970–1 C.B. 214.

.10 Fulbright Foundation. Services per- ormed abroad for a commission or foundation es- ablished under the Fulbright Act are excepted rom employment unless the government agency nvolved determines otherwise. §§408.203, 408.213. (Secs. 1420, 1426, '39 Code; Secs. 3121, 3122, '54 Code.)

Rev. Rul. 55–96, 1955–1 C.B. 488.

50.11 Liability for FICA tax; medicare extended. Guidance is provided, in the form of questions and answers, relating to the extension of the FICA hospital insurance tax to federal employees. §§31.3101–1, 31.3111–1, 31.3121(a)–1, 31.6302(c)–1, 31.6413(c)–1 (Sec. 601.401, S.P.R.; Secs. 3101, 3111, 3121, 6302, 6413, '54 Code.)

Rev. Proc. 83–30, 1983–1 C.B. 722.

50.12 Naval cafeteria association. A cafeteria association organized and operated under Navy Department regulations for the purpose of providing in-plant feeding services for civilian employees of a Naval shore establishment is an instrumentality wholly-owned by the U.S. and services performed in its employ are excepted from employment for FUTA purposes. Remuneration for services performed by such employees is includible in gross income. §31.3306(c)(6)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 58–527, 1958–2 C.B. 741.

50.13 Nonappropriated welfare fund activities. Civilian employees of the Consolidated Nonappropriated Welfare Fund operated under Army and Air Force Regulations are covered for purposes of the FICA, but not the FUTA. §§403.213, 408.213. (Secs. 1426, 1607, '39 Code; Secs. 3121, 3306, '54 Code.)

Rev. Rul. 54–556, 1954–2 C.B. 369.

50.14 Reemployed civil service annuitant. The salary received by a reemployed civil service annuitant after an amount equal to the annuity allocable to the actual employment period was deducted as prescribed by law is wages for purposes of income tax withholding. §31.3401(a)–1. (Secs. 61, 3401; '54 Code.)

Rev. Rul. 79–1, 1979–1 C.B. 481.

50.15 Reinstated employee; retroactive pay. Upon separation, a Government employee received a lump-sum leave payment from which tax was withheld. In the next year, he was reinstated with retroactive pay to the date of separation. Such retroactive compensation is subject to income tax withholding even though the employee had to refund the entire amount of the lump-sum payment to the Government. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 57–603, 1957–2 C.B. 705.

50.16 Self-employed or employed in off-duty hours; liability for hospital insurance tax. If a federal employee who has been continuously employed since December 31, 1983, is also self-employed during off-duty hours, the individual's maximum income that is subject to the hospital insurance self-employment tax is reduced by the amount of wages subject to the hospital insurance tax. If the federal employee was employed instead of self-employed during off-duty hours, both the federal and outside wages are subject to the hospital insurance tax, but a credit may be taken on the individual's federal income tax return for any excess taxes deducted because of the dual employment. §31.6413(c)–1. (Secs. 1401, 1402, 3101, 3111, 3121, 6413; '54 Code.)

Rev. Rul. 84–56, 1984–1 C.B. 184.

50.17 Survey by state and Federal Government. Individuals engaged under a cooperative arrangement between a state and the Geological Survey of the Department of the Interior are held to be employees of the Geological Survey, and the Department of the Interior is responsible for determining whether their services constitute employment for Federal employment tax purposes. However, the state has control over the payment of the wages and is required to withhold income tax and file returns and pay the tax so withheld. §31.3121(d)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 57–22, 1957–1 C.B. 318.

50.18 Tutor for Federal agency. An individual engaged by a Federal agency to perform services for it as a foreign language teacher and tutor under a contract is not an employee with respect to such services, but is engaged in a trade or business for self-employment tax purposes. §1.1402(c)–1. (Secs. 1402, 3122; '54 Code.)

Rev. Rul. 56–615, 1956–2 C.B. 565.

50.19 Union services while on leave of absence. Service performed for a union by a Federal employee on leave of absence without pay, who elected to continue participation in the U.S. Civil Service Retirement System during the period of leave, is not excepted from employment for purposes of the FICA and the FUTA. §§31.3121(b)(6)–1, 31.3306(c)(6)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 76–422, 1976–2 C.B. 309.

50.20 V.A. rehabilitative program. Amounts received by patients and members in V.A. hospitals and domiciliaries for services performed under its therapeutic and rehabilitative program are includible in gross income even though, under Pub. L. 87–574, 38 U.S.C. 618, these individuals are not Federal employees. Such amounts are not wages for purposes of the FICA and income tax withholding. §§31.3102–1, 31.3402(a)–1. (Secs. 3102, 3402; '54 Code.)

Rev. Rul. 65–18, 1965–1 C.B. 32.

50.21 Work-training payments; removed air traffic controllers. Payments made by the Department of Transportation to or on behalf of individuals, removed from their positions as air traffic controllers, for expenses incurred in their training for other employment constitute wages. §31.3401(a)–1. (Secs. 61, 3401; '54 Code.)

Rev. Rul. 75–32, 1975–1 C.B. 14.

50.22 Year-end early salary payment. A year-end salary payment for work performed, received by a Federal employee before the regularly scheduled payday in the employee's following taxable year, is subject to income tax withholding and must be included in the employee's gross income in the year received. §31.3401(a)–1. (Secs. 61, 3122, 3401; '54 Code.)

Rev. Rul. 75–478, 1975–2 C.B. 28.

Fishing services

52.1 Captain and crew of fishing vessel. The standards of maritime law are to be applied in determining whether the captain and crew who contract with owners of vessels to engage in fishing operations are employees of the owners for FICA and FUTA purposes. §§31.3121(d)–1, 31.3306 (i)–1. (Secs. 3121, 3306; '54 Code.)

Webb, 397 U.S. 179, Ct. D. 1935, 1970–1 C.B. 194.

52.2 Crew on company-owned fishing vessels. Fishermen performing services on company-owned schooners are employees of the company, and shares of profit received are wages for FICA and FUTA purposes; the value of meals and lodging furnished the employees is not wages for purposes of income tax withholding. S.S.T. 387 superseded. Modified by Rev. Rul. 81–222. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–385, 1972–2 C.B. 535.

52.3 Crews; withholding. None of the services of the mate, engineer, and cook of a fishing boat paid an amount in addition to a share of the catch, or crew members entitled to hourly pay for repair of nets and other incidental work while the boat is in port, are excepted from employment under section 3121(b)(20) and all of their remuneration for the services is subject to FICA and income tax withholding. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 77–102, 1977–1 C.B. 299.

52.4 Master and crew; vessel of nine net tons. Services performed by the master and crew in the operation of a vessel of nine net tons engaged in carrying individuals to and from fishing grounds where they fish from the vessel are excepted from employment for purposes of the FUTA. However, the remuneration is subject to the withholding of income tax. Em. T. 423 superseded. §§31.3121(b)-3, 31.3306(c)(17)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 69–350, 1969–1 C.B. 271.

52.5 Nonresident alien crew members of fishing vessel; withholding. Services performed on the high seas by nonresident alien crew members hired in a foreign country by a U.S. commercial fishing vessel of more than 10 net tons, having a usual crew of 16, and that stops during its voyage at a U.S. port for fuel and supplies constitute "employment." However, amounts paid to the nonresident alien crew members are not wages subject to income tax withholding. §§31.3121(b)–3, 31.3306(c)–2, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–216, 1978–1 C.B. 305.

52.6 Puerto Rican residents; withholding. Remuneration paid for fishing services performed on the high seas or in the territorial waters of the U.S. by employees who are residents of Puerto Rico and who are citizens of both Puerto Rico and the U.S. are subject to income tax withholding for the U.S. (Sec. 3402, '54 Code.)

Rev. Rul. 57–236, 1957–1 C.B. 355.

52.7 Suppliers of salmon to packers' association. "Company fishermen" and "independent fishermen" both supply salmon to a packers' association under a union agreement. The company fishermen are furnished all equipment by the association and deliver all their fish, with certain exceptions, to the association. The independent fishermen furnish all their own equipment and may deliver their fish to any cannery they choose. The company fishermen are employees of the association; the independent fishermen are not. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–168, 1957–1 C.B. 337.

Foreign employees

54.1 Alien crew members of fishing vessel; employment; withholding. Services performed on the high seas by nonresident alien crew members hired in a foreign country by a U.S. commercial fishing vessel of more than 10 net tons, having a usual crew of 16, and that stops during its voyage at a U.S. port for fuel and supplies constitute "employment." However, amounts paid to the nonresident alien crew members are not wages subject to income tax withholding. §§31.3121(b)–3, 31.3306(c)–2, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–216, 1978–1 C.B. 305.

54.2 Alien trainee; domestic U.S. corporation. Citizens of a foreign country, who are in the U.S. to be trained under a program conducted by a domestic U.S. corporation for employment in its foreign plant, are employees of the company. §§1.1441–1, 1.1441–3, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1441, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 66–76, 1966–1 C.B. 238.

54.3 Canadian citizens or residents; railroad retirement. Citizens or residents of Canada, who are not citizens or residents of the United States, who perform all of their services in Canada for a railroad company are not employees of the company for purposes of the RRTA. §31.3231(b)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 83–184, 1983–2 C.B. 173.

54.4 Credit union on military base. Services performed after 1971 by U.S. citizens for a credit union operating on a U.S. military base in a foreign country are not excepted from employment for purposes of the FUTA. Rev. Rul. 70–310 modified. (Sec. 3306, '54 Code.)

Rev. Rul. 76–72, 1976–1 C.B. 326.

54.5 Departing U.S.; refund of FICA tax. An alien who, after performing services in employment in the U.S. returns to his home country with no intention of performing such services again, has no right to a refund of FICA tax. S.S.T. 216 superseded. §31.3121(b)–3. (Sec. 3121, '54 Code.)

Rev. Rul. 70–437, 1970–2 C.B. 200.

54.6 Entertainers; "single loan-out" and "double loan-out" arrangements. Examples illustrate the tax consequences, under various sections of the Code and the U.S.—United Kingdom Income Tax Convention, of contracts between a U.S. person and a United Kingdom corporation for the performance of services by a foreign entertainer, sometimes referred to as "single loan-out" arrangements, and of contracts between a Channel Islands corporation, a United Kingdom corporation, and a U.S. person for the performance of services by a foreign entertainer, sometimes referred to as "double loan-out" arrangements. §§31.3401(a)(6)–1, 31.3402(a)–2. (Secs. 61, 482, 543, 861, 864, 871, 882, 1442, 3401, 3402; '54 Code.)

Rev. Rul. 74–330, 1974–2 C.B. 278; Rev. Rul. 74–331, 1974–2 C.B. 281.

54.7 FICA coverage agreement. Amounts paid by a domestic corporation that entered into an agreement with the Service under section 3121(l) to have the services of U.S. citizens employed by its foreign subsidiary covered under the U.S. social security system before the U.S. and the foreign country entered into an agreement to make the wages of U.S. citizens working for a foreign subsidiary in the foreign country subject to taxes under the social security system of the foreign country are taxes for purposes of sections 3101(c) and 3111(c), and the domestic corporation is relieved of its obligation to make payments under the section 3121(l) agreement. §§31.3101–1, 31.3111–1, 36.3121(l)(1)–1. (Secs. 3101, 3111, 3121; '54 Code.)

Rev. Rul. 79–232, 1979–2 C.B. 359.

54.8 FICA coverage agreement; corporate merger. The resultant corporation in a statutory merger or consolidation is not required to enter into a new contract on Form 2032, Contract Coverage Under Title II of the Social Security Act, as amended, to continue the coverage for U.S. citizens employed by the foreign subsidiaries of the absorbed corporation. §31.3121(l)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 64–76, 1964–1 (Part 1) C.B. 331.

54.9 Guam; American employer. Amounts paid by an American employer to Guamanian citizens, not otherwise citizens of the U.S., for services performed in Guam are not subject to FUTA taxes of the U.S. §31.3306(j)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 74–304, 1974–1 C.B. 301.

54.10 Journalists and newspaper correspondents. Wages for services performed within the U.S. by nonresident aliens as journalists and newspaper correspondents for a foreign news service in excess of 90 days during the taxable year or for a domestic newspaper publishing company are subject to FICA and to withholding of income tax. §§31.3121(b)–3, 31.3401(a)(6)–1, 31.3402(a)–1. (Secs. 3121, 3401, 3402; '54 Code.)

Rev. Rul. 71–125, 1971–1 C.B. 358.

54.11 Physicians; VA hospital. A VA hospital that has substantial activity in the area of education, maintains an association with a State university, and teaches interns, residents in postgraduate training, and medical students enrolled at the university, but does not maintain a regular faculty or curriculum or a regularly organized student body, is not an educational institution for purposes of Article XVIII of the U.S.—United Kingdom Income Tax Convention. The salary paid by the hospital to a U.K. citizen employed for less than two years as a staff physician in a teaching and research capacity while simultaneously teaching at the university is subject to withholding under section 3402 of the Code. §§31.3401(a)(6)–1, 31.3402(e)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 74–484, 1974–2 C.B. 342.

54.12 Resident aliens; foreign source earned income; nondiscrimination clause. Resident aliens from Canada, Denmark, Germany, the Netherlands, and the United Kingdom qualify for the exclusion of earned income under section 911(a)(2) of the Code to the same extent as U.S. citizens under nondiscrimination clauses in applicable treaties. Amplified to include other listed countries. §31.3401(a)(8)(A)–1. (Secs. 911, 3401; '54 Code.)

Rev. Rul. 72–330, 1972–2 C.B. 444; Rev. Rul. 72–598, 1972–2 C.B. 451.

54.13 Resident and nonresident aliens; services on the outer Continental Shelf. Services performed by nonresident and resident aliens on an oil rig temporarily attached to the outer Continental Shelf of the United States are "employment" for FICA purposes under section 3121(b). §§31.3121(a)–1, 31.3121(b)–1, 31.3121(e)–1. (Secs. 3121, 7701; '54 Code.)

Rev. Rul. 86–108, 1986–37 I.R.B. 13.

54.14 Students. A foreign student in the U.S. for the purpose of advanced training in nursing at a hospital for a period of at least two years, who as part of his training performs part-time services as an employee of the hospital and receives remuneration from the hospital for the services, will be classified as a nonresident alien and his services are excepted from employment for FICA and FUTA purposes. However, his remuneration is subject to income tax withholding; the student is treated as a resident alien under the provisions of Rev. Rul. 54–87, which is amplified to be made applicable to income tax withholding. §§31.3121(b)(19)–1, 31.3306(c)(18)–1, 31.3401(a)(6)–1, 31.3402(a)–1, 31.3402(f)(6)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 67–159, 1967–1 C.B. 280.

54.15 Subsidiary of domestic corporation. Social security coverage of individuals employed by a foreign subsidiary of a domestic corporation is limited to U.S. citizens and such coverage ceases on the date an employee becomes a citizen of a foreign country. Any social security tax paid by the domestic corporation on remuneration for services performed during the period the employee was a U.S. citizen is not refundable, but

mounts paid during the period he is a citizen of a foreign country may be adjusted or refunded within the prescribed statutory period. §36.3121(l)(1)(1)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 57–576, 1957–2 C.B. 641.

54.16 Subsidiary of domestic partnership. A partnership, although the sole owner of one or more foreign corporations, does not qualify for the election to have social security coverage extended to certain employees of their foreign subsidiaries. §36.3121(l)(1)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 58–14, 1958–1 C.B. 358.

54.17 Successor domestic parent; coverage agreement. Procedure to be followed by a domestic corporation, as successor to the assets and liabilities of a dissolved domestic corporation, to continue social security coverage of U.S. citizen employees of a foreign subsidiary of the predecessor domestic corporation prior to its dissolution. §36.3121(l)(1)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 57–216, 1957–1 C.B. 349.

54.18 Teachers; Canadian residents in U.S. Remuneration received by a resident of Canada for teaching at a university while temporarily in the U.S. for a period not exceeding two years is subject to taxes imposed by the FICA, irrespective of the exemption accorded such an individual from the payment of U.S. income tax under the U.S.-Canada tax convention. §31.3121(a)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 56–609, 1956–2 C.B. 1066.

54.19 Truck driver; Canadian citizen. Services performed within the U.S. by a Canadian citizen employed as a truck driver by a Canadian company are employment for purposes of section 3121(b). §31.3121(b)–3. (Sec. 3121, '54 Code.)

Rev. Rul. 79–318, 1979–2 C.B. 352.

54.20 Truck drivers; Canadian residents. Remuneration paid to residents of Canada who are not citizens of the U.S. and who, in performing services as truck drivers, enter and leave the U.S. at frequent intervals, is not subject to income tax withholding. However, such remuneration is subject to FICA taxes. §§31.3121(b)–3, 31.3401(a)(7)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 66–77, 1966–1 C.B. 242.

54.21 Wages paid in U.S. and abroad; withholding. Separate monthly payments by a domestic corporation to its U.S. citizen-employees working overseas, one payment made in the U.S. and the other in a foreign country and subject to that country's income tax withholding, are wages for purposes of income tax withholding only with respect to those payments made in the U.S. that exceed the amounts excludable under section 911 of the Code. §31.3401(a)–1. (Secs. 911, 3401; '54 Code.)

Rev. Rul. 75–485, 1975–2 C.B. 414.

54.22 Withheld taxes; refund. The income tax withheld from wages paid after December 31, 1966, to nonresident alien employees for services performed within the U.S. cannot be refunded by the employer. The nonresident alien employee must file a timely return, Form 1040NR, to obtain a refund. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 69–29, 1969–1 C.B. 273.

54.23 Withholding; Australian convention. The remuneration received for services performed within the U.S. for an Australian employer by a nonresident alien who is a resident of Australia, and who is not present in the U.S. for a period or periods exceeding in the aggregate 183 days during the taxable year, is excepted from withholding provided the alien files with the employer the statement described in section 31.3401(a)(6)–1(e) of the regulations. §§31.3401(a)(6)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 76–381, 1976–2 C.B. 311

Forms
(See also: Returns)

60.1 211; informants' reward. A new Form 211, Public Voucher for Reward for Original Information has been approved for use by informants in applying for reward. The use of Form 211 applies to original information furnished to internal revenue officers leading to detection of violation of the internal revenue laws and to the recovery of internal revenue taxes, penalties, fines, and forfeitures. (Sec. 3792, '39 Code; Sec. 7623, '54 Code.)

Rev. Rul. 140, 1953–2 C.B. 470.

60.2 656; offers in compromise. Form 656, Offer in Compromise, will be used in submitting all offers in compromise. It superseded prior Form 656 used for submitting cash offers and Form 656–C used for submitting deferred payment offers. (Sec. 601.203, S.P.R.; Sec. 7122, '54 Code.)

Rev. Proc. 57–41, 1957–2 C.B. 1119.

60.3 872–A; limitation period extension; assessments. Conditions are set forth with respect to the acceptance by Appeals officials and Districts Directors of Internal Revenue of Form 872–A, Special Consent to Extend the Time to Assess Tax. Form 872–A, accepted in place of Form 872, relieves taxpayers and the Service from the inconvenience of obtaining renewal consents. Rev. Proc. 71–11 superseded. §301.6501(c)–1. (Sec. 601.105, S.P.R.; Sec. 6501, '54 Code.)

Rev. Proc. 79–22, 1979–1 C.B. 563.

60.4 940; credit reductions; computation. Procedure is set forth for the computation of reductions in credit against tax reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, for 1961 and subsequent years, with respect to wages paid for services performed in a State which has not restored to the U.S. Treasury amounts which were made available under Title XII of the Social Security Act or under the Temporary Unemployment Compensation Act of 1958. Rev. Proc. 65–33 superseded. Amplified by Rev. Procs. 68–5 and 69–10. §31.3302 (c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 67–9, 1967–1 C.B. 583.

60.5 940; credit reductions; computation. The credit against unemployment tax for amounts paid into the unemployment funds maintained by various states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands, is reduced for wages paid by employers during 1983 for services performed in those jurisdictions. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 84–5, 1984–1 C.B. 32.

60.6 2190; optional method of reporting farm income. Form 2190, Change in Method of Computing Net Farm Earnings From Self-Employment, is the form prescribed for use by farmers in place of filing an amended return to effect or revoke an election to use the optional method to report net earnings from self-employment. §1.1402(a)–1. (Sec. 601.602, S.P.R.; Sec. 1402, '54 Code.)

Rev. Proc. 57–14, 1957–1 C.B. 744.

60.7 2297; waiver of registered notice of disallowance. A taxpayer may execute a waiver, Form 2297, Waiver of Registered Mail Notification of Claim Disallowance, of the requirement that a registered notice of disallowance of a claim be issued where an agreement is secured at the conclusion of an investigation or conference. A taxpayer may request the opportunity to execute the waiver at any time prior to issuance of the registered notice. §301.6532–1. (Sec. 601.602, S.P.R.; Sec. 6532, '54 Code.)

Rev. Proc. 57–12, 1957–1 C.B. 740.

60.8 2678; employer appointment of agent. Application by agents for authority to perform acts required of employers under the employment tax provisions of the Code should be made to the District Director or Director of a Service Center with whom the agent will file the returns. The application should be accompanied by Form 2678, Employer Appointment of Agent. Further, the time and manner of filing returns by agents and for correcting wage reports under the FICA are prescribed. Rev. Proc. 57–31 superseded. Amplified by Rev. Procs. 80–4 and 84–33. §31.3504–1. (Sec. 601.401, S.P.R.; Sec. 3504, '54 Code.)

Rev. Proc. 70–6, 1970–1 C.B. 420.

60.9 2678; welfare recipient/employer. The Internal Revenue Service will not enforce the requirement that each welfare recipient/employer submit Form 2678 to the state or local government. Rev. Proc. 70–6 amplified. §31.3504–1. (Sec. 601.401, S.P.R.; Sec. 3504, '54 Code.)

Rev. Proc. 80–4, 1980–1 C.B. 581.

60.10 4219; third-party paying or providing wages. Procedures providing the conditions under which third parties financing employers' payrolls are liable for the taxes required to be withheld from employees' wages are updated. Rev. Proc. 67–41 superseded. §31.3505–1. (Sec. 601.401, S.P.R.; Sec. 3505, '54 Code.)

Rev. Proc. 78–13, 1978–1 C.B. 591.

60.11 SS–10; limitation period; assessment; parent and subsidiaries. Conditions are prescribed under which the Service will accept one properly executed Form SS–10, Consent to Fix Period of Limitation on Assessment of Employment Taxes, covering a parent corporation and any or all of its subsidiary corporations. Rev. Proc. 69–8 superseded. Clarified by Rev. Proc. 82–6. §§301.6501(c)–1, 301.6511(c)–1. (Sec. 601.105, S.P.R.; Secs. 6501, 6511, '54 Code.)

Rev. Proc. 72–38, 1972–2 C.B. 813.

60.12 SS–10; limitation period; assessment; parent and subsidiaries. Less than wholly owned subsidiaries may be included in multiple consents executed for parent and subsidiaries. Rev. Proc. 72–38 clarified. §§301.6501(c)–1, 301.6511(c)–1. (Sec. 601.105, S.P.R.; Secs. 6501, 6511, '54 Code.)

Rev. Proc. 82–6, 1982–1 C.B. 409.

60.13 W–2; compensation paid; statement to employees. Only one Form W–2 must be furnished to the employee for a calendar year where (1) the employee worked in different branch offices of the same corporation and each branch office maintains its own payroll office from which payment is made; (2) the employer paid a bonus and the payment is separate from the regular salary payment; or (3) payments are in the form of life insurance purchased by the employer which are includible in the employee's gross income under section 79(a) of the Code. Pending further study, this ruling will not be applied to employers with multi-state and multi-division operations resulting in decentralized accounting and payroll systems who, in prior years, have furnished more than one Form W–2 and employers who maintained separate payrolls and issued separate Forms W–2 for irregular types of compensation, i.e., executive bonuses and group term life insur-

ance payments. §§31.6051–1, 301.7805–1. (Secs. 6051, 7805; '54 Code.)

Rev. Rul. 70–158, 1970–1 C.B. 267; Rev. Rul. 70–579, 1970–2 C.B. 288.

60.14 W–2; employee annuity payment; exempt organization. Amounts reportable as wages on Form W–2 for income tax withholding purposes by a section 501(c)(3) organization that purchases an annuity, including life insurance protection, for an employee pursuant to a salary reduction agreement must include that portion of the annuity payment attributable to the purchase of current life insurance and any amount in excess of the employee's exclusion allowance. However, for FICA tax purposes the entire amount must be reported, subject to the annual wage limitation. §31.6051–1. (Sec. 6051, '54 Code.)

Rev. Rul. 70–453, 1970–2 C.B. 287.

60.15 W–2; Federal employee; erroneous salary payments. Erroneous salary payments to Federal employees, the collection of which is waived by law, must be reflected in the employees' Forms W–2 for the year such erroneous payment is made to the extent there has been no repayment of such amount by the employees within that year. Further, where such amount has been repaid and later refunded to the employees, it is not again subject to withholding of income tax. This will not be applied to require any employer agency to correct a Form W–2 for any year prior to 1969 under certain conditions. §§31.3402(a)–1, 31.6011(a)–4, 31.6051–1, 301.7805–1. (Secs. 3402, 6011, 6051, 7805; '54 Code.)

Rev. Rul. 70–177, 1970–1 C.B. 214.

60.16 W–2; issuance; employment terminated during year. Employers were allowed additional time to furnish forms W–2 in 1974 to employees whose employment was terminated during the year. §31.6051–1. (Sec. 601.401, S.P.R.; Sec. 6051, '54 Code.)

Rev. Proc. 74–15, 1974–1 C.B. 437.

60.17 W–2; issuance; employment terminated during year. The requirement that employers furnish Forms W–2 within 30 days after last payment of wages to persons leaving their employ during a calendar year was waived until March 31 for employees terminated in 1975 and paid on or before March 1. §31.6051–1 (Sec. 601.401, S.P.R.; Sec. 6051, (CL)54 Code.)

Rev. Proc. 75–19, 1975–1 C.B. 687.

60.18 W–2; repayments to unemployment benefit trust. Form W–2 should not reflect either the wages or income tax withheld of employees who received benefit payments under a supplemental unemployment benefit plan and later repaid to the trust the amounts received within the same taxable year prior to the time their Forms W–2 were issued and after adjustments to the withholding were made pursuant to section 6413 of the Code. However, if such repayments are made after the Forms W–2 were issued, but within the same calendar year, the trust should furnish Corrected Forms W–2. §§31.6051–1, 31.6413(a)–1. (Secs. 6051, 6413; '54 Code.)

Rev. Rul. 78–198, 1978–1 C.B. 433.

60.19 W–2; sick pay. Conditions are given under which an employer may show separately on Form W–2 excludable sick pay paid after 1974. Employees must submit a statement showing the computation of excludable sick pay on their individual income tax returns. Rev. Procs. 56–17 superseded and 73–19 obsoleted. §31.3401(a)–1. (Sec. 601.401, S.P.R.; Secs. 105, 3401, '54 Code.)

Rev. Proc. 75–7, 1975–1 C.B. 648.

60.20 W–2, W–3, 941, W–4, W–5; successor-predecessor employers. Standard and alternative procedures to be used in preparing employment tax forms when a predecessor-successor employer relationship exists. Rev. Proc. 83–66 modified and, as modified, superseded. §§31.6011(a)–4, 31.6051–1. (Sec. 601.602, S.P.R.; Secs. 6011, 6051, '54 Code.)

Rev. Proc. 84–77, 1984–48 I.R.B. 30.

60.21 W–4; false information. An employer must request another Form W–4, Employee's Withholding Allowance Certificate, from an employee who indicates, other than on Form W–4, on or before the date on which the employee furnishes a Form W–4 to the employer, that the name, address, social security number, or number of exemptions shown on the employee's Form W–4 is false. If the employee fails to provide a valid Form W–4, the employer must withhold income tax from the employee as from a single person claiming no exemptions. §31.2402(f)(2)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 80–68, 1980–1 C.B. 225.

60.22 Agent-prepared deposit cards. Requirements and conditions are set forth for reporting agents who perform a payroll service and who, in connection with this service, submit employment federal tax deposit payments for their clients. Rev. Proc. 80–31 modified and superseded. §§31.6302(c)–1. 31.6302(c)–3. (Sec. 601.602, S.P.R.; Sec. 6302, '54 Code.)

Rev. Proc. 86–33, 1986–33 I.R.B. 8.

60.23 Bulk quantities to preparers; shipping charge. The handling and shipping charge for furnishing bulk quantities of forms to paid preparers is adjusted. Rev. Proc. 81–47 superseded. (Sec. 601.602, S.P.R.)

Rev. Proc. 82–54, 1982–2 C.B. 845.

60.24 Computer-prepared and computer-generated. Conditions are set forth under which the Service will accept computer-prepared and computer-generated tax forms. Rev. Proc. 82–4 superseded. §§1.6001–1, 1.6011–1. (Sec. 601.602, S.P.R.; Secs. 6001, 6011, '54 Code.)

Rev. Proc. 83–10, 1983–1 C.B. 651.

60.25 Magnetic media; requirements for use. Requirements and conditions are set forth under which information reportable on Forms 1099–DIV, 1099–INT, 1099–MISC, 1099–MED, 1099–OID, 1099–PATR, 1099L, 1087–DIV, 1087–INT, 1087–MISC, 1087–MED, 1087–OID, and the Agriculture Subsidy Payment Report may be submitted on magnetic disk pack; Rev. Proc. 75–27 superseded. (Sec. 601.602, S.P.R.; Secs. 6041, 6042, 6043, 6047, 6049, '54 Code.)

Rev. Proc. 79–33, 1979–1 C.B. 600.

60.26 Magnetic tape; Form 940; reporting agents. Conditions are set forth under which reporting agents preparing Form 940, Employer's Federal Unemployment Tax Return, can furnish the required information on magnetic tape instead of paper documents. §§31.3504–1, 31.6011(a)–1. (Sec. 601.602, S.P.R.; Secs. 3504, 6011, '54 Code.)

Rev. Proc. 86–26. 1986–22 I.R.B. 9.

60.27 Magnetic tape; Forms 941 and 941E; reporting agents. Requirements are set forth under which reporting agents preparing Form 941, Employer's Quarterly Federal Tax Return, and 941E, Quarterly Return of Withheld Federal Income Tax, can furnish the required information on magnetic tape instead of paper documents. Rev. Proc. 84–11 superseded. §§31.3504–1, 31.6011(a)–1. (Sec. 601.602, S.P.R.; Secs. 3504, 6011, '54 Code.)

Rev. Proc. 86–27, 1986–22 I.R.B. 34.

60.28 Magnetic tape; Form 941a. Quarterly reports of wages taxable under the FICA filed on Form 941, Employer's Quarterly Federal Tax Return, may be submitted on reels of magnetic tape in lieu of listing on Form 941a, Continuation Sheet for Form 941, 941 VI, or 943. (Sec. 601.401, S.P.R.)

Rev. Proc. 56–36, 1956–2 C.B. 1400.

60.29 Magnetic tape; Forms W–4; reporting requirements. Requirements and conditions are set forth for submitting certain Forms W–4, Employee's Withholding Allowance Certificates, on magnetic tape instead of filing paper returns. Rev. Proc. 84–41 superseded. §§31.3402(b)–1, 31.3402(f)(5)–1, 31.3402(h)(4)–1, 31.3402(p)–1, 31.6001–5. (Sec. 601.602, S.P.R.; Secs. 3402, 6001, 6361, '54 Code.)

Rev. Proc. 86–13, 1986–10 I.R.B. 7.

60.30 Magnetic tape; Forms W–2, 941; reporting requirements. Requirements for magnetic media reporting of wage and tax data to Federal and State agencies have been modified and incorporated into the Social Security Administration publication TIB3, available at local Social Security offices. Rev. Proc. 71–18 obsoleted. §31.6051–1. (Sec. 601.602, S.P.R.; Secs. 6041, 6051, '54 Code.)

Rev. Proc. 74–42, 1974–2 C.B. 496.

60.31 Magnetic tape reporting; information returns; Form 8027. Requirements and conditions are set forth for submitting Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, on magnetic tape. Rev. Proc. 84–69 superseded. (Sec. 601.602, S.P.R.)

Rev. Proc. 86–45, 1986–49 I.R.B. 15.

60.32 Magnetic tape; requirements for use. Requirements and conditions are set forth under which information reportable on Forms 1099, 1087, W–2, W–2P, 1099–MED, 1099–OID, 1087–OID, and Agriculture Subsidy Payment Reports may be submitted on magnetic tape in lieu of official forms. Rev. Proc. 69–16 superseded. Supplemented by Rev. Proc. 72–35. §§31.6011(a)–7, 31.6051–1. (Sec. 601.602, S.P.R.; Secs. 6011, 6051, '54 Code.)

Rev. Proc. 71–20, 1971–2 C.B. 528.

60.33 Microfilm reproduction; Forms W–6 and W–7. The conditions set forth in Rev. Proc. 81–46 for the reproduction of general books of account and supporting records also govern the microfilm or microfiche reproduction of Form W–6, Individual Certificate of Exemption, and Form W–7, Certificate of Exemption—Other Than Individuals. Rev. Proc. 81–46 clarified. (Sec. 601.602, S.P.R.)

Rev. Proc. 83–6, 1983–1 C.B. 582.

60.34 Reproduction; 499R–2/W–2PR. Specifications are set forth for the printing of Form 499R–2/W–2PR, Withholding Statement. Payers with computer capability are encouraged to use magnetic media for filing the original of the form with the Social Security Administration. §§31.6051–1, 31.6051–2, 31.6071(a)–1, 31.6081(a)–1. (Sec. 601.602, S.P.R.; Secs. 6011, 6041, 6051, 6071, 6081, 6091, '54 Code.)

Rev. Proc. 79–51, 1979–2 C.B. 532.

60.35 Reproduction; charges for proofs and negatives. The per page charges for reproduction proofs and photonegatives of the major income tax forms, instructions, and publications have been increased to $1.00 for reproduction proofs and $3.00 for photonegatives. Rev. Proc. 66–35 superseded and Rev. Procs. 67–42, 75–14, and 75–15 modified. (Sec. 601.602, S.P.R.)

Rev. Proc. 75–43, 1975–2 C.B. 577.

60.36 Reproduction; copyright. No copyright may be obtained by a private person for any Federal tax form or any reproduction of such form. Persons reproducing these forms commercially for sale to the public should not include in advertising matter, issued to promote such sale,

nything which gives the impression that these orms have been the subject of a copyright. 39.54–1. (Sec. 54, '39 Code; Sec. 6001, '54 ode.)

Rev. Rul. 54–166, 1954–1 C.B. 83.

60.37 Reproduction; Form 941a. Substiutes for Form 941a, Continuation Sheet for chedule A of Forms 941, 941–m, 941SS, or 943, nay be used in lieu of the official form subject, owever, to prescribed conditions. Rev. Proc. 4–66 superseded. §31.6011(a)–1. (Sec. 601.602, .P.R.; Sec. 6011, '54 Code.)

Rev. Proc. 67–42, 1967–2 C.B. 679.

60.38 Reproduction; Form 941c. Substiutes for Form 941c, Statement to Correct Inforation Previously Reported Under the Federal nsurance Contributions Act, may be privately rinted and used in lieu of the official form, subect, however, to prescribed conditions. §31.6011(a)–1. (Sec. 601.602, S.P.R.; Sec. 6011, 54 Code.)

Rev. Proc. 62–35, 1962–2 C.B. 535.

60.39 Reproduction; Forms 1096, 1098, 1099 series, 5498, W–2G and W–3G. Requirements are set forth for reproducing paper substitutes for Forms 1096, 1098, 1099 series, 5498, W–2G and W–3G, and for furnishing substitute statements to recipient payees. Rev. Proc. 84–70 superseded. §31.3402(q)–1. (Sec. 601.602, S.P.R.; Secs. 402, 408, 6041, 6041A, 6042, 6043, 6044, 6045, 6047, 6049, 6050A, 6050B, 6050D, 6050E, 6050H, 6050J, '54 Code.)

Rev. Proc. 85–25, 1985–1 C.B. 558.

60.40 Reproduction; Forms W–2, W–2P, and W–3. Specifications are set forth under which substitutes for Forms W–2, W–2P, and W–3 may be privately printed without prior approval of the Service. Proposed substitutes not conforming totally to these specifications must be submitted to the Commissioner for consideration. Rev. Proc. 85–20 superseded. §§31.6051–1, 31.6051–2, 31.6071(a)–1, 31.6081(a)–1. (Sec. 601.602, S.P.R.; Secs. 6011, 6041, 6047, 6051, 6071, 6081, 6091, '54 Code.)

Rev. Proc. 86–24, 1986–20 I.R.B. 18.

60.41 Reproduction; W–2c and W–3c. Specifications are set forth for the private printing of substitute Forms W–2c and W–3c. §§31.6051–1, 31.6051–2, 31.6071(a)–1, 31.6081(a)–1. (Sec. 601.602, S.P.R.; Secs. 6011, 6041, 6047, 6051, 6071, 6081, 6091, '54 Code.)

Rev. Proc. 83–63, 1983–2 C.B. 581.

60.42 Reproduction; W–6 and W–7. Guidelines are set forth for preparation of substitute Forms W–6 and W–7 by payers of interest, dividends, and patronage dividends who are required to withhold tax. (Sec. 601.602, S.P.R.)

Rev. Proc. 82–64, 1982–2 .B. 852.

60.43 Reproduction requirements. Requirements are set forth for the reproduction and private design and printing of substitute tax forms. Rev. Proc. 82–3 superseded. §§1.6001–1, 1.6011–1. (Sec. 601.602, S.P.R.; Secs. 6001, 6011, '54 Code.)

Rev. Proc. 83–9, 1983–1 C.B. 639.

Fraud

(See also: Criminal prosecutions; Penalties)

62.1 Evidence; remand for new trial. A case must be remanded to the District Court for the limited purpose of determining the truth of certain alleged voluntary disclosures made by corporate officers with a view to obtaining immunity prior to tax evasion prosecution where newly discovered evidence, adduced by the Government on its motion to remand, casts grave doubts as to the truth of these disclosures, tainting and rendering suspect the entire record. §39.145–1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Shotwell Manufacturing Co., 355 U.S. 233 Ct. D. 1814, 1958–1 C.B. 535.

62.2 Evidence; voluntary disclosure policy. The taxpayers made disclosures under the Treasury Department's then voluntary disclosure policy (which promised immunity to taxpayers from criminal prosecution if the disclosure was made before investigation). Fraudulent disclosures were made by the taxpayers. The evidence disclosed was used at the trial in which taxpayers were convicted of willful attempted evasion of Federal income tax. *Held,* the disclosures are admissible in evidence where fraudulent. The admission of the disclosed evidence did not offend the self-incrimination clause of the Fifth Amendment. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Shotwell Manufacturing Company, 371 U.S. 341, Ct. D. 1876, 1963–1 C.B. 365.

62.3 Felony and misdemeanor statutes. A taxpayer who willfully attempted to evade Federal income taxes by filing a false return was properly convicted of a felony rather than a misdemeanor since the scope of the misdemeanor provision had been shrunk by a series of specific enactments that had the potency of implied repeal. §39.145–1. (Secs. 145, 3616, '39 Code; Secs. 7201, 7207, '54 Code.)

Achilli, 353 U.S. 373, Ct. D. 1810, 1957–2 C.B. 905.

62.4 Felony and misdemeanor statutes; jury instruction. Where the charge for tax evasion against a defendant was made a felony, he is not entitled to a jury instruction that he could be found guilty of a misdemeanor, even though the facts necessary to prove either charge would be the same. §39.145–1. (Secs. 145, 3616, '39 Code; Secs. 7201, 7207, '54 Code.)

Berra, 351 U.S. 131, Ct. D. 1797, 1956–1 C.B. 644.

62.5 Hearsay evidence as basis of indictment. A defendant may be required to stand trial for willful evasion of taxes and a conviction may be sustained even though indictment by the grand jury was based solely on the hearsay evidence of government agents. §39.145–1. (Sec. 145, '39 Code; Sec. 7201, '54 Code.)

Costello, 350 U.S. 359, Ct. D. 1794, 1956–1 C.B. 639.

62.6 Lesser-included offense; jury charge. In a criminal prosecution for the felony offense of willfully attempting to evade and defeat income tax, the taxpayer was not entitled to a lesser-included offense charge of a misdemeanor under either section 7203 or 7207 of the Code. A lesser-included offense charge is not proper where, on the evidence presented, the factual issues to be resolved by the jury are the same as both the lesser and greater offenses. §301.7207–1. (Secs. 7201, 7203, 7207; '54 Code.)

Sansone, 379 U.S. 886, Ct. D. 1894, 1965–2 C.B. 451.

62.7 Meaning of "willfully." The word "willfully" as used in section 7206 means a voluntary, intentional violation of a known legal duty. (Sec. 7206, '54 Code.)

Pomponio, 429 U.S. 10, Ct. D. 1981, 1976–2 C.B. 446

62.8 Meaning of "willfully"; felony or misdemeanor. The word "willfully" has the same meaning in section 7206 of the Code under which it is a felony for a person to make and subscribe to a return or document which he does not believe to be true and correct in every material matter as it does in section 7207 under which it is a misdemeanor for a person to deliver or disclose a return or document known by him to be fraudulent or false in any material matter. The distinction between the statutes is in the additional misconduct that is essential to the violation of the felony provision. §301.7207–1. (Secs. 7206, 7207, '54 Code.)

Bishop, 412 U.S. 346, Ct. D. 1958, 1973–2 C.B. 417.

62.9 Preliminary hearing on evidence. It is not a violation of due process to deny a preliminary hearing based on the unsupported suspicions of the defendant to ascertain whether evidence taken in violation of defendant's rights before a 1952 Grand Jury was used directly or derivatively before a 1953 Grand Jury which returned indictment or to allow tainted evidence to be admitted where defendant's counsel has consciously and intentionally waived objection to its receipt. §39.145–1. (Secs. 145, 3793, '39 Code; Secs. 7201, 7206, '54 Code.)

Lawn, 355 U.S. 339, Ct. D. 1817, 1958–1 C.B. 540.

Government depositary

64.1 American employer in foreign country. American employers in foreign countries who are required to forward deposits of FICA taxes and income tax withheld on wages to authorized depositaries in the U.S. should forward their deposits by mail (preferably air mail) for the first two months of the calendar quarter on or before the fifteenth day after the close of each month. If a depositary receipt is date-stamped by the depositary after the 15th day of the respective month or months, the employer should, when filing Form 941, attach a statement showing the date the deposits were mailed to the depositary. §31.6302(c)–1. (Sec. 601.104, S.P.R.; Sec. 6302, '54 Code.)

Rev. Rul. 60–22, 1960–1 C.B. 628.

64.2 Bankruptcy. A taxpayer's deposit of FICA and FUTA taxes and withheld income taxes in an authorized bank is treated as payment of such taxes to the U.S. Treasury even though such deposit is not received by the Department of the Treasury because of fraud, embezzlement, or bankruptcy of the bank. §31.6302(c)–1. (Sec. 6302, '54 Code.)

Rev. Rul. 78–244, 1978–1 C.B. 433.

64.3 Deficiency in taxes deposited. The Service is unable to approve any plan or method whereby taxes required to be deposited may be deposited in an amount less than the amount of taxes actually collected. However, a penalty will not be imposed if the deficiency in the amount deposited is less than one percent. (Sec. 6302, '54 Code.)

Rev. Rul. 55–271, 1955–1 C.B. 196.

64.4 Deficiency in taxes deposited. The 5-percent failure-to-deposit penalty will be imposed on the total tax reported on Form 941 for an employer whose aggregate tax did not exceed $200 until the third month of the quarter and who, without reasonable cause, did not deposit the total tax by the return due date. §§31.6302(c)–1, 301.6656–1. (Secs. 6302, 6656, '54 Code.)

Rev. Rul. 75–488, 1975–2 C.B. 497.

64.5 Deposits. An employer whose employees are paid on July 13 for the semi-monthly pay period ended July 6 and whose undeposited income and FICA taxes withheld from wages for this period amount to over $2000 must deposit such taxes within three banking days after the quarter-

monthly period ending July 15. §31.6302(c)–1. (Sec. 6302, '54 Code.)
Rev. Rul. 74-126, 1974–1 C.B. 337.

64.6 Deposits. The employer who withheld $1,000 from wages for the quarter-monthly period July 1 through July 7 and on July 11 deposited $5,000 which represented the entire amount of taxes withheld on bonuses paid that day was not required under section 31.6302(c)–1(a)(1)(i)(*b*) of the regulations to deposit the $1,000 at the close of the quarter-monthly period ending July 15 because the aggregate amount of undeposited taxes was less than $2,000. §31.6302(c)–1. (Sec. 6302, '54 Code.)
Rev. Rul. 76-561, 1976–2 C.B. 395.

64.7 Deposits. Regulations are prescribed governing the handling and processing of deposits made by employers with Federal Reserve Banks and qualified depositary banks, of employer and employee taxes and certain excise taxes. Provisions relating to collection of Federal taxes, qualification of Government depositaries, functions of Federal Reserve Banks, forms and receipts, and procedures to be followed are set forth.
Treas. Dept. Cir. 848 (Second Revision), 1958–2 C.B. 1086.

64.8 Deposits; FICA; medicare extended to federal employees. Guidance is provided, in the form of questions and answers, relating to the extension of the FICA hospital insurance tax to federal employees. §§31.3101–1, 31.3111–1, 31.3121(a)–1, 31.6302(c)–1, 31.6413(c)–1. (Sec. 601.401, S.P.R.; Secs. 3101, 3111, 3121, 6302, 6413, '54 Code.)
Rev. Proc. 83-30, 1983–1 C.B. 722.

64.9 Deposits; local banking holidays. For purposes of applying the three banking days limitation in which certain employers are required to deposit FICA taxes and withheld income tax after the close of the prescribed semimonthly period there shall be excluded from the term "banking days" any local banking holidays observed by authorized commercial banks, as well as Saturdays, Sundays, and legal holidays. §§31.6302(c)–1, 301.7503–1. (Secs. 6302, 7503; '54 Code.)
Rev. Rul. 66-230, 1966–2 C.B. 494.

64.10 Deposits; religious order; vow-of-poverty members. A religious order that has elected social security coverage for its vow-of-poverty members, whose wages subject to the FICA are in the form of non-cash support, is considered to have adopted an assumed payroll accounting period and an assumed payday of monthly or less for the purpose of meeting deposit requirements. §31.6302(c)–1. (Sec. 6302, '54 Code.)
Rev. Rul. 74-85, 1974–1 C.B. 338.

64.11 Deposits; RRTA taxes. The deposit of the taxes under the RRTA on compensation paid in October for services rendered in September, the last month in a quarterly return period, is due by October 31. §31.6302(c)–2. (Sec. 6302, '54 Code.)
Rev. Rul. 78-169, 1978–1 C.B. 432.

64.12 Deposits; underpayment of taxes. The dates for deposit of underpayments of tax by an employer who pays its employees only on the first work day of each month and whose deposits of taxes result in an aggregate amount of undeposited taxes at the close of each first quarter-monthly period of more than $2,000 are determined in three situations. §31.6302(c)–1. (Sec. 6302, '54 Code.)
Rev. Rul. 78-157, 1978–1 C.B. 431.

64.13 Deposits; wire transfer; RRTA. Instructions are provided to railroad employers on wire transferring Railroad Retirement Tax Deposits in accordance with the Railroad Retirement Solvency Act of 1983. §31.6302(c)–1. (Sec. 601.602, S.P.R.; Sec. 6302, '54 Code.)
Rev. Proc. 83-90, 1983–2 C.B. 615.

64.14 Overdeposits. An overdeposit of tax for a semi-monthly period may be applied to reduce the amount required to be deposited for a subsequent semi-monthly period, including a period in the month immediately following the end of a quarterly period. Rev. Rul. 67-198 superseded. §31.6302(c)–1. (Sec. 6302, '54 Code.)
Rev. Rul. 68-544, 1968–2 C.B. 581.

64.15 Payroll period; advances. An employer ostensibly on a four-week payroll period but making advance payments at the end of the second week of such period is required to withhold income and employee taxes from the advance payments and to make semi-monthly deposits of the taxes withheld, together with the applicable employer tax, within three banking days after the close of the semi-monthly period in which wages are paid. §§31.3401(b)–1, 31.6302(c)–1. (Secs. 3401, 6302; '54 Code.)
Rev. Rul. 66-376, 1966–2 C.B. 495.

64.16 Timeliness; weekend or holiday. Where the due date for filing quarterly employment tax returns or for making deposits of these taxes falls on a Saturday, Sunday or legal holiday, the returns or deposits will be considered timely if made on the next succeeding business day. §§406.605, 406.606, 408.606, 408.607. (Secs. 1430, 1627, '39 Code; Secs. 3121, 3401, '54 Code.)
Rev. Rul. 55-83, 1955–1 C.B. 523.

64.17 Timeliness; weekend or holiday; mailing date. Section 7503 of the Code does not extend the mailing date for tax deposits required under section 31.6302(c)–1(a) of the regulations and withheld employment taxes due to be deposited within three days with the third day falling on Saturday that are mailed on the following Monday and delivered on Tuesday are not timely deposited. §§31.6302(c)–1, 301.7502–1, 301.7503–1. (Secs. 6302, 7502, 7503; '54 Code.)
Rev. Rul. 75-331, 1975–2 C.B. 502.

Government employees
(See: Federal services; Instrumentalities)

Homeworkers

66.1 Blind individuals; charitable organization. Blind individuals who are incapable of rehabilitation in the sheltered workshop of a charitable organization and who are furnished materials by the organization on which they may work at home whenever they please without being bound by production schedules are not employees of the organization where they are free to sell the completed articles either to the public or to the organization. §§31.3121(d)–1, 31.3306(c)(8)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 65-165, 1965–1 C.B. 446.

66.2 Child care services. Factual situations illustrate the tax treatment of amounts received and amounts expended by individuals providing child care services in their own homes. Rev. Rul. 56-70 superseded. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 61, 62, 162, 170, 1401, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 77-279, 1977–2 C.B. 12.

66.3 Tailor; custom work in home. A tailor performing the unsupervised manufacture of garments in his home for merchant tailors is a home worker employee for purposes of FICA but not for purposes of FUTA or withholding of income tax. S.S.T. 391 and Mim. 5763 revoked. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 72-88, 1972–1 C.B. 319.

66.4 Typists. An individual, since 1953, has done typing from time to time on a piece-work basis in her home under an oral agreement with a corporation without direction and control as to the means and method of completing an assignment and no guarantee of a minimum quota of work or compensation. The individual's services are not subject to state licensing requirements. The individual is not an employee of the corporation under common law rules for purposes of FUTA and income tax withholding; however, she is an employee for FICA purposes for services performed after 1954. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 64-280, 1964–2 C.B. 384.

66.5 Weaver; Christmas wreaths. Individuals solicited by a company to weave Christmas wreaths in their own homes on company supplied frames but without company instruction, direction, or control and who are under no obligation to sell the finished wreaths to the company are not employees of the company. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 74-62, 1974–1 C.B. 291.

Identifying numbers

68.1 Corporations. The previously assigned identifying number should be used by the surviving corporation in a statutory merger and in a reincorporation qualifying as a reorganization under section 368(a)(1)(F) of the Code. A new identifying number should be requested by the new corporation in a consolidation and in any reincorporation transaction not qualifying as a section 368(a)(1)(F) reorganization. §§31.6011(b)–1, 301.7701–12. (Secs. 6011, 7701, '54 Code.)
Rev. Rul. 73-526, 1973–2 C.B. 404.

68.2 Verification, backup withholding. Payers of interest dividends, patronage dividends and brokers may identify incorrect Social Security Numbers of payees by submitting magnetic tape files to the Service, provided certain requirements are met. (Sec. 601.103, S.P.R.; Secs. 3406, 6676, '54 Code.)
Rev. Proc. 84-10, 1984–1 C.B. 155.

Included-excluded services

72.1 Distributors of merchandise samples. Merchandise samples distributed for advertising purposes do not come within the category of newspapers, handbills, shopping news, and similar advertising materials. Accordingly, services of carrier boys under the age of 18 in house-to-house distribution of such articles are not excepted from employment. §31.3121(b)(14)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 56-478, 1956–2 C.B. 684.

72.2 Domestic and business services. An individual performs services of a domestic nature in the private nonfarm home of the employer and, in addition, services at his place of business. *Held*, the taxes imposed under the FICA should be computed on the total wages paid to the employee provided the individual meets the $50 a quarter test with respect to the domestic services. The included and excluded service rule is not applicable. (Sec. 3121, '54 Code.)
Rev. Rul. 55-386, 1955–1 C.B. 120.

72.3 Insurance agents and solicitors; salary and commissions; FUTA. Examples illustrate that the FUTA tax on remuneration paid

insurance agents and solicitors, compensated during the calendar year by both commissions and other compensation, and the exclusion provided by section 3306(c)(14) of the Code are determined for each pay period rather than on an annual basis. Rev. Ruls. 67–44 and 71–357 revoked. §31.3306(c)(14)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 75–81, 1975–1 C.B. 345.

72.4 Milk-tester; dairy herd improvement association. Since part of the duties and services performed by a milk-tester engaged by a dairy herd improvement association constitute agricultural labor, it is necessary to apply the "included and excluded wages" rule to determine the liability of the dairy association for the withholding of income tax for services performed within any payroll period. §§31.3121(d)–1, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 59–51, 1959–1 C.B. 257.

72.5 Registered nurse employed by hospital; student in specialized program. The services of a registered nurse who is employed full-time by a hospital are not excepted from employment for FICA and FUTA purposes even though the nurse is also enrolled and regularly attending classes in a specialized program at a nurses' training school. §§31.3121(b)(13)–1, 31.3306(c)(13)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 85–74, 1985–1 C.B. 331.

Information

(See: Publicity of information; Returns)

Inspection of records or returns

(See: Books and records; Returns)

Instrumentalities

74.1 Auditor for state municipalities. An individual who examines state tax returns for municipalities to see that they receive their allocable shares of income tax, is not furnished office facilities nor carried on the payroll of the municipalities, and determines his own working hours and the manner in which he performs his services, is not an employee of the municipalities. He is engaged in a trade or business, and the income therefrom is considered in computing net earnings from self-employment. §§39.481–1, 406.203. (Secs. 481, 1621, '39 Code; Secs. 1402, 3401, '54 Code.)

Rev. Rul. 56–2, 1956–1 C.B. 496.

74.2 Blind persons engaged by State agency. Services performed by visually handicapped individuals for the Arizona Industries for the Blind, a wholly-owned instrumentality of the State, are excepted from employment for purposes of the FICA and FUTA. However, wages paid such individuals are subject to income tax withholding. §§406.400, 408.204, 408.2'4. (Secs. 1426, 1622, '39 Code; Secs. 3121, 3402, '54 Code.)

Rev. Rul. 54–253, 1954–2 C.B. 324.

74.3 Blind persons engaged by State agency. Services performed by visually handicapped individuals for a State Board of Education of the Blind, a wholly-owned instrumentality of the State, are excepted from employment for purposes of the FICA and FUTA. However, such individuals are subject to income tax withholding. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–254, 1954–2 C.B. 326.

74.4 Blind persons licensed by State agency. Visually handicapped individuals who, under a license granted by a State commission for the blind, operate and manage vending stands in public buildings are independent contractors and not employees of the commission; net earnings from the operation of the stands constitute self-employment income. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–255, 1954–2 C.B. 326.

74.5 Board of education; instructors; vocational training. Instructors engaged by a city board of education to conduct vocational education classes in a company's plant under the direction and control of the board are employees of the city; services performed are excepted from employment for purposes of the FICA and FUTA, but are subject to the withholding of income tax. The instructors are employees of the company with respect to part-time services performed in instructing and advising employees of the company, outside the scope of those contemplated by the vocational educational program. S.S.T. 362 superseded. §§31.3121(b)(7)–1, 31.3121(d)–1, 31.3306(c)(7)–1, 31.3306(i)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–291, 1971–2 C.B. 343

74.6 Contract mail carrier. An individual who contracts for the delivery of mail is an independent contractor and not an employee of the U.S. Government nor is he an instrumentality of the U.S. Individuals he hires are his employees and they are subject to FICA, FUTA, and income tax withholding. S.S.T. 205 superseded. §§31.3121(b)(6)–1, 31.3306(a)(6)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402, '54 Code.)

Rev. Rul. 69–362, 1969–1 C.B. 254.

74.7 County fair association. Services performed by individuals under the jurisdiction of an association, engaged in conducting an agricultural fair for a county, a political subdivision of California, subject to a contract with the county, are excepted from employment. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 57–56, 1957–1 C.B. 308.

74.8 County farm bureau. The N County Agricultural Extension Assn., organized under Pennsylvania statutes for the purpose of cooperating with the U.S. Dept. of Agriculture and the Penn. State College in carrying out functions required by the Smith-Lever Act, financed by county funds, no membership dues being paid, and expressly declared by statute to be a political subdivision of the State, is a wholly owned instrumentality within the meaning of section 1426(b)(8) of the FICA, as amended. §408.214. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–224, 1954–1 C.B. 215.

74.9 County hospital. A county hospital established and operated pursuant to North Carolina State law through a board of trustees appointed by the board of county commissioners is a wholly owned instrumentality of the county. Services performed in its employ are excepted from employment for purposes of the FICA and FUTA; however, the hospital is responsible for income tax withholding from wages paid its employees. (Sec. 3121, '54 Code.)

Rev. Rul. 56–173, 1956–1 C.B. 480.

74.10 County hospital. A county hospital organized and operated by a private corporation and managed by persons elected by members is not a state instrumentality even though it must be licensed and otherwise conform to state requirements. (Sec. 3121, '54 Code.)

Rev. Rul. 56–174, 1956–1 C.B. 481.

74.11 County school bus service. An individual who contracts to furnish school bus service to a county school district is an independent contractor and the assistants he hires to drive the buses are his employees. Amounts received by the contractor must be considered in computing his net earnings from self-employment. Em. T. 442 superseded. §§1.1402(c)–1, 31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 1402, 3121, 3306, 3402; '54 Code.)

Rev. Rul. 72–175, 1972–1 C.B. 316

74.12 Court-appointed disciplinary commission. Services performed by employees of a disciplinary commission established by a State's high court are excepted from employment for FICA and FUTA purposes, but the wages are subject to income tax withholding. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 74–354, 1974–2 C.B. 326

74.13 Court reporters and deputies; Florida. Services performed by official court reporters and their deputies appointed under the Florida Statutes Annotated are excepted from employment for purposes of the FICA and FUTA; however, remuneration for such services is subject to income tax withholding. S.S.T. 318 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 70–528, 1970–2 C.B. 204

74.14 Drainage construction worker using own equipment. A construction worker, engaged by a county to repair drainage ditches under the direction and control of the county surveyor, who uses his own mechanical backhoe for which he is paid a specified amount in addition to his hourly wages, is an employee of the county; services performed are excepted from employment for purposes of FICA and FUTA, but wages paid therefor are subject to withholding of income tax. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–576, 1973–2 C.B. 336

74.15 Ferry company. A ferry company created and owned jointly by a county and a city in the same State is an instrumentality wholly owned by one or more political subdivisions of the State. Therefore, services performed in the employ of the company are excepted from employment for FICA and FUTA purposes; however, remuneration for such services is subject to income tax withholding. S.S.T. 74 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–106, 1968–1 C.B. 423.

74.16 FICA; hospital insurance; extension to state and political subdivision employees. Guidelines, in question and answer form, relate to the amendment of section 3121(u), that extends the hospital insurance (medicare) tax portion of the Federal Insurance Contributions Act (FICA) to wages of newly hired employees of states and political subdivisions. §§31.3101–2, 31.3111–2. (Secs. 3101, 3111, 3121; '54 Code).

Rev. Rul. 86–88, 1986–28 I.R.B. 10.

74.17 Fire association; Oregon. Services performed in the employ of a fire association organized in Oregon to protect the forest lands of its members are not excepted from employment. S.S.T. 246 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 70–483, 1970–2 C.B. 201.

74.18 Homemakers under contract with county. An individual, employed as a homemaker under a separate contract with a county to perform services for disabled welfare recipients, who is subject to the county's direction, supervision, and review, and whose contract may be terminated at any time for failure to fulfill his contractual

obligations, is an employee of the county. His wages are subject to income tax withholding; however, they are excepted from employment for FUTA and FICA purposes. Social Security coverage may be obtained only by means of an agreement between the State and the Secretary of Health, Education, and Welfare. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–268, 1973–1 C.B. 415.

74.19 Horse racing boards; race track stewards. Race track stewards who are licensed by a State horse racing board, act as the Board's representatives at approved race meetings, and are subject to discharge by the board are considered employees of the State agency and are excepted from employment. The remuneration for their services is not subject to FUTA and FICA taxes. Social Security coverage may be obtained only by means of an agreement between the State and the Secretary of Health, Education, and Welfare. For income tax withholding purposes, they are considered employees of the racing association that controls the payment for their services. §§31.3121(b)(7)–1, 31.3121(d)–1, 31.3306(c)(7)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–253, 1973–1 C.B. 414.

74.20 Horticultural society. Services performed by employees of a horticultural society, a private corporation organized and incorporated by a special act of the State legislature, are not excepted from employment. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 70–485, 1970–2 C.B. 201.

74.21 Indian tribal business enterprise. A business enterprise organized and operated by an Indian tribe without specific statutory authorization is not an instrumentality wholly owned by the U.S. Such activity is a tribal enterprise and services performed in its employ are not excepted from employment. (Sec. 3306, '54 Code.)

Rev. Rul. 56–110, 1956–1 C.B. 488.

74.22 Inspectors for city; inspection of utility companies construction. Services performed by individuals subject to the exclusive control of the city government as inspectors of utility companies' construction work are excepted from employment under the FICA and FUTA, even though the wages for such services are paid by the utility companies; however, the wages are subject to income tax withholding. S.S.T. 339 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 70–503, 1970–2 C.B. 203.

74.23 Library corporation. A nonprofit library corporation organized with private endowment funds is not a wholly owned instrumentality, even though a city contributes two-thirds of its income. (Sec. 3121, '54 Code)

Rev. Rul. 56–88, 1956–1 C.B. 464.

74.24 Library corporation. A library corporation, operating under the management and supervision of a library board appointed by a city and with funds appropriated by the city, county and state, is a wholly owned state instrumentality or political subdivision and services performed in its employ are excepted from employment. (Sec. 3121, '54 Code.)

Rev. Rul. 56–89, 1956–1 C.B. 465.

74.25 Lower Colorado River Authority. Services performed by the employees of the Lower Colorado River Authority, organized under the Texas laws, are excepted from employment for FICA and FUTA purposes. However, the wages of the employees are subject to income tax withholding. S.S.T. 127 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–444, 1968–2 C.B. 430.

74.26 Minnesota; soil conservation district. A soil conservation district organized and operated under Minnesota law for purposes of carrying out a state soil conservation program is a political subdivision of the state and services performed in its employ are excepted from employment under the FICA and FUTA; individuals furnished by the Soil Conservation Service of the Department of Agriculture to the district are employees of such Service, and no liability is incurred by the district under the Acts with respect to their services. However, the district is responsible for withholding income tax from wages paid its employees. §§31.3121(a)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 57–120, 1957–1 C.B. 310.

74.27 Multi-state insurance associations. An association organized and operated by the heads of the insurance departments of the several states pursuant to express or implied statutory authority for the purpose of performing a governmental function in connection with the administration of state insurance laws is an instrumentality wholly owned by the several states. Accordingly, services performed in its employ are excepted from employment for purposes of the FICA and FUTA. However, remuneration for such services is subject to income tax withholding. §§31.3121(a)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 57–128, 1957–1 C.B. 311.

74.28 Naval cafeteria association. A cafeteria association organized and operated under Navy Department regulations for the purpose of providing in-plant feeding services for civilian employees of a Naval shore establishment is an instrumentality wholly owned by the U.S. and services performed in its employ are excepted from employment for FUTA purposes. Remuneration for services performed by such employees is includible in gross income. §31.3306(c)(6)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 58–527, 1958–2 C.B. 741.

74.29 New York; superintendent of banks; liquidating services. Services performed by individuals employed by the superintendent of banks of New York to assist in the liquidation of banking institutions are excepted from employment. However, the estate of each organization for which the superintendent is acting as receiver has the status of an employer, and those individuals who perform services under him or his representatives in carrying on or liquidating the business of such organizations as distinguished from those who act on behalf of the superintendent in a representative capacity are employees of the estate and the services are not excepted from employment. G.C.M. 19865 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 71–68, 1971–1 C.B. 281.

74.30 Nonprofit municipal league. A municipal league, a private nonprofit corporation, which has not been designated as an agent or instrumentality by any municipal corporation, and whose activities are governed by its board of trustees, with no control and supervision vested in any public authority, is not a wholly owned instrumentality of political subdivisions of the state of incorporation, and services performed in its employ are not excepted from employment. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 65–26, 1965–1 C.B. 444.

74.31 Pennsylvania State Board of Law Examiners. Services performed by employees of the Pennsylvania State Board of Law Examiners are excepted from employment for FICA and FUTA purposes; however, the remuneration for such services is subject to income tax withholding. S.S.T. 171 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–412, 1968–2 C.B. 428.

74.32 Police officers; duties at city theater. Services performed at a theater owned by an amusement company by city police officers under the authority granted in a city ordinance subject to the control of the captain of police are excepted from employment under the FICA and FUTA, although the remuneration for such services is paid directly to the officers by the theater owners. However, such remuneration is subject to income tax withholding. S.S.T. 327 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 70–504, 1970–2 C.B. 204.

74.33 Police officers; off-duty; traffic control at bank. Off-duty policemen who volunteer for assignment to direct traffic at a bank auto drive-in facility, who are controlled by the police department, and who are paid by the city from the bank's payments to the police department for the service, are employees of the city excepted from employment under the FICA and FUTA but their pay is subject to income tax withholding. §§31.3121(b)(7)–1, 31.3121(d)–1, 31.3121(d)–2, 31.3306(a)–1, 31.3306(c)(7)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–162, 1974–1 C.B. 297.

74.34 Public power district; Nebraska. Services performed by the employees of a public power district organized under Nebraska law are excepted from employment for purposes of the FICA and FUTA; however, the remuneration for such services is subject to income tax withholding. S.S.T. 94 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–171, 1968–1 C.B. 425.

74.35 School for the deaf. A school organized as a private nonprofit corporation under a state statute to promote the education of deaf mutes, although it receives its financial support from the state and carries on its educational program under state supervision, is not considered a wholly owned state instrumentality for FICA and FUTA purposes. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 56–224, 1956–1 C.B. 485.

74.36 Social Security coverage of State employees. A wholly owned state instrumentality may qualify for exemption from tax under section 501(c)(3) of the Code. Coverage under the Social Security Act of employees of a wholly owned state instrumentality may be effected only pursuant to a compact under section 218 of the Social Security Act. The waiver procedure provided in section 3121(k) of the FICA is not applicable. Amplified by Rev. Rul. 60–384 with respect to qualification under section 501(c)(3) of the Code. §408.214. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–319, 1955–1 C.B. 119.

74.37 Soil and water conservation district; Connecticut. A Connecticut soil and water conservation district formed as a private non-stock corporation by landowners who have complete control over its operations is not a wholly owned instrumentality or political subdivision of the State. Therefore, services performed in the employ

of the district are not excepted from employment. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 69–453, 1969–2 C.B. 182.

74.38 Soil conservation district; Minnesota. A soil conservation district organized and operated under Minnesota law for purposes of carrying out a state soil conservation program is a political subdivision of the state and services performed in its employ are excepted from employment under the FICA and FUTA; individuals furnished by the Soil Conservation Service of the Department of Agriculture to the district are employees of such Service, and no liability is incurred by the district under the Acts with respect to their services. However, the district is responsible for withholding income tax from wages paid its employees. §§31.3121(a)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 57–120, 1957–1 C.B. 310.

74.39 Sports Area Commission. A Sports Area Commission, created pursuant to an agreement between a city and two villages to provide recreational facilities for residents, is an instrumentality wholly owned by one or more political subdivisions of the state. Therefore, services performed in the employ of the Commission are excepted from employment under the FICA and FUTA. However, the remuneration for such services is subject to income tax withholding. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 65–196, 1965–2 C.B. 388.

74.40 State citrus commission; demonstrators of advertising agency. Individuals engaged and paid by an advertising agency on behalf of a State citrus commission to demonstrate citrus products of the State are employees of the commission for employment tax purposes; but the advertising agency is responsible for the withholding of income tax from the wages paid by it to the demonstrators. Distinguished by Rev. Rul. 58–26. §§403.204, 403.205, 403.214, 406.203, 406.205, 408.204, 408.205, 408.214. (Secs. 1426, 1607, 1621, '39 Code; Secs. 3121, 3306; 3401, '54 Code.)

Rev. Rul. 54–471, 1954–2 C.B. 348.

74.41 State work program under Manpower Development and Training Act. Participants in a State program, established to provide short-term employment in disaster relief activities for unemployed individuals and funded under the Manpower Development and Training Act of 1962, are employees of the State excepted from employment for purposes of the FICA and FUTA, but the payments made to them are subject to income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–413, 1974–2 C.B. 333.

74.42 Survey by state and Federal Government. Individuals engaged under a cooperative arrangement between a state and the Geological Survey of the Department of the Interior are held to be employees of the Geological Survey, and the Department of the Interior is responsible for determining whether their services constitute employment for Federal employment tax purposes. However, the state has control over the payment of the wages and is required to withhold income tax and file returns and pay the tax so withheld. §31.3121(d)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 57–22, 1957–1 C.B. 318.

74.43 Tennessee; attorney to collect delinquent taxes. An attorney appointed under the Tennessee Code, to collect delinquent taxes, is not an officer or employee of the State or any political subdivision thereof for purposes of the exception from employment. However, income derived from his services is subject to self-employment tax. S.S.T. 415 superseded. §§1.1402(c)–1, 31.3121(b)(7)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 70–546, 1970–2 C.B. 205.

74.44 Texas; water improvement district. Services performed by employees of water improvement districts organized under the Texas statutes are excepted from employment for FICA and FUTA tax purposes; however, remuneration for such services is subject to income tax withholding. S.S.T. 159 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–495, 1968–2 C.B. 433.

74.45 Volunteer fire departments; Pennsylvania. Services performed by employees of volunteer fire departments organized under the laws of Pennsylvania are excepted from employment for purposes of the FICA and FUTA; however, wages paid such employees are subject to income tax withholding. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 70–484, 1970–2 C.B. 201.

74.46 Washington; State port districts. Port districts organized under the statutes of the State of Washington are political subdivisions of the State and neither such districts nor their employees are subject to FICA and FUTA. However, the remuneration of their employees is subject to income tax withholding. S.S.T. 98 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–366, 1968–2 C.B. 427.

Insurance agents

76.1 Branch managers and soliciting agents. Insurance company branch managers whose activities are subject to control and supervision are employees of the company; soliciting agents not subject to company control and supervision are not employees. S.S.T. 249 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–287, 1969–1 C.B. 257.

76.2 Commissions. Commissions received after 1950 by a full-time life insurance salesman with respect to policies sold prior to 1951 (when he was not an employee) constitute income from self-employment; however, commissions on policies sold after 1950 constitute wages. Distinguished by Rev. Rul. 58–177; clarified by Rev. Rul. 59–103. §§39.481–2, 408.204, 408.226. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–312, 1954–2 C.B. 327.

76.3 Commissions; service, production, and conservation. An insurance company incurs liability for tax imposed by the FUTA with respect to remuneration paid in the form of production, conservation, and service commissions to its agent-employees for their services for such company, where the service commissions are based on the amount of insurance in force in the debit areas and the commissions are paid while the agents are on vacation. §§31.3306(b)(2)–1, 31.3306(c)(14)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 67–439, 1967–2 C.B. 357.

76.4 Guaranteed salary and commissions. Examples illustrate that the FUTA tax on remuneration paid to insurance agents and solicitors, compensated during the calendar year by both commissions and other compensation, and the exclusion provided by section 3306(c)(14) of the Code are determined for each pay period rather than on an annual basis. Rev. Ruls. 67–44 and 71–357 revoked. §31.3306(c)(14)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 75–81, 1975–1 C.B. 326.

76.5 Independent contractors. Insurance company agents whose activities are not subject to control and supervision by the company are independent contractors and are not employees of the company. G.C.M. 18705 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–288, 1969–1 C.B. 258.

76.6 Industrial debits. An agent remunerated solely by way of commission who sells insurance for an association on the industrial or debit plan is an employee of the association for purposes of the FICA and income tax withholding. The services of such an agent are excepted from employment under the FUTA. §§31.3121(d)–1, 31.3306(c)(14)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–176, 1958–1 C.B. 349.

76.7 Industrial debits. An individual engaged by two related insurance companies as an industrial insurance salesman is remunerated on a commission basis, determines his own work schedule and method of solicitation, is provided desk space, forms and collection books, receives instructions in selling by company personnel, is required to file reports and remit collections on a weekly basis and performs solely for the two companies, is an employee of the two insurance companies for FICA and income tax withholding purposes. The services of such an individual are excepted from employment for FUTA purposes. §§31.3121(d)–1, 31.3306(c)(14)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–177, 1958–1 C.B. 351.

76.8 Life, health and accident salesmen. An insurance salesman who, under the applicable common law rules, does not have the status of an employee, and who sells both life and accident and health insurance policies for one company, but primarily sells accident and health insurance, is not a full time life insurance salesman and, consequently not an employee for FICA purposes. The individual is engaged in a trade or business for self-employment tax purposes. Rev. Rul. 54–312 clarified. §§1.1402(c)–1, 31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 59–103, 1959–1 C.B. 259.

76.9 Noncash remuneration; withholding. Individuals employed as insurance salesmen are not "retail commission salesmen" contemplated by section 3402(j) of the Code, therefore, their employers are required to deduct and withhold income tax with respect to noncash remuneration paid such individuals. §31.3402(j)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 57–551, 1957–2 C.B. 707.

76.10 Officers of company also agents. Officers of an insurance company who sell insurance policies aside from and independent of their duties as officers, are, in effect, serving the company in two different and distinct capacities. They are employees with respect to duties performed as officers of the company. They are not employees with respect to services performed in selling insurance and the remuneration received for such services must be considered in computing net earnings from self-employment. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(a)–1. (Secs. 1401, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–505, 1958–2 C.B. 728.

76.11 Percentage of gross earnings of all company agents. Payments to individual insurance agents of a percentage of the gross earnings of all the agents of the company do not bear a sufficient relation to the production of each individual agent to be considered remuneration solely by way of commission for purposes of the exception from employment. §31.3306(c)(14)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 65–225, 1965–2 C.B. 396.

76.12 Retirement, disability, and life insurance benefits. Life insurance, disability, or retirement benefits received by an agent-employee of a life insurance company, which are excluded from wages under the FUTA, does not prevent the agent from being considered as remunerated solely by way of commission. Accordingly, the company does not incur liability for the tax with respect to the remuneration paid during the calendar year to such an agent if he is otherwise remunerated solely by way of commission. §§31.3306(b)(2)–1, 31.3306(c)(14)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 67–238, 1967–2 C.B. 356.

Interest

(See: Deficiencies; Overpayments)

International organizations

78.1 Concurrent civil service coverage. Services performed in the U.S. in the employ of an international organization by an individual who is a citizen of the U.S. are included in the term "trade or business", and salary for such services is included in net earnings from self-employment even though he is covered concurrently by the Civil Service Retirement Act. §§1.1402(c)–3, 31.3121(b)(15)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 66–69, 1966–1 C.B. 24.

78.2 European Space Research Organization. The European Space Research Organization is redesignated as a public international organization entitled to the privileges, exemptions, and immunities provided by the International Organization Immunities Act. E.O. 11318 and E.O. 11351 superseded.

E.O. 11760, 1974–1 C.B. 411.

78.3 International Maritime Satellite Organization. The International Maritime Organization is designated as a public international organization entitled to the privileges, exemptions, and immunities provided by the International Organizations Immunities Act.

E.O. 12238, 1980–2 C.B. 759.

78.4 Multinational Force and Observers and International Food Policy Research Institute. The Multinational Force and Observers and the International Food Policy Research Institute are designated as public international organizations entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

E.O. 12359, 1982–1 C.B. 352.

78.5 Organization of African Unity. The organization of African Unity (OAU) has been designated as a public international organization entitled to the privileges, exemptions, and immunities provided by the International Organizations Immunities Act.

E.O. 11767, 1974–1 C.B. 411.

78.6 Organization of American States; Permanent Observers. Diplomatic privileges and immunities are extended to Permanent Observers to the Organization of American States and to members of their diplomatic staffs.

E.O. 11931, 1976–2 C.B 627.

78.7 Southeast Asia Treaty Organization and the International Coffee Study Group. The Southeast Asia Treaty Organization and the International Coffee Study Group, no longer in existence, have been removed from the list of international organizations afforded certain privileges and immunities under the International Organizations Immunities Act.

E.O. 12033, 1978–1 C.B. 520.

78.8 World Intellectual Property Organization. The World Intellectual Property Organization has been designated as a public international organization entitled to the privileges, exemptions, and immunities provided by the International Organizations Immunities Act.

E.O. 11866, 1975–2 C.B. 542.

Jeopardy assessments

(See: Assessments)

Levy

82.1 Certificates of deposit. Money on deposit in a bank, represented by certificates of deposit in the hands of a delinquent taxpayer, is within the scope of a bank account and subject to levy. I.T. 2504 superseded. §301.6331–1. (Sec. 6331, '54 Code.)

Rev. Rul. 73–12, 1973–1 C.B. 601.

82.2 Certificates of deposit; negotiable. A Government levy on a delinquent taxpayer's funds represented by a negotiable certificate of deposit may be made only by presenting and surrendering the negotiable certificate to the maker. Rev. Rul. 73–12 modified. §301.6331–1. (Sec. 6331, '54 Code.)

Rev. Rul. 75–355, 1975–2 C.B. 478.

82.3 Checking account; partnership. A partnership checking account in a bank is property of the partnership and is not subject to levy to satisfy the tax assessed against an individual partner. I.T. 3356 superseded. §301.6331–1. (Sec. 6331, '54 Code.)

Rev. Rul. 73–24, 1973–1 C.B. 602.

82.4 Commissions applied against employee's overdrawn account; "expense money." Commissions earned which are applied by the employer as a credit against an employee's overdrawn account and "expense money" advanced under an arrangement whereby it must be accounted for by the employee are not subject to levy and distraint for unpaid taxes. G.C.M. 5251 superseded. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Rev. Rul. 73–365, 1973–2 C.B. 407.

82.5 Corporation transfer of security titles or payments after service. Questions and answers are presented relating to a corporation's obligations under section 6332 concerning the tranfer of title in stocks and bonds by registered owners and the payment of dividends and interest after the service of a notice of levy. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Rev. Rul. 75–554, 1975–2 C.B. 478.

82.6 Distraint; rights of third party; summary trial. A Federal District Court has no jurisdiction to determine, in a summary proceeding, the respective rights of the parties in property of a taxpayer seized by the Government for delinquent taxes; petitioner, a third party claimant, could have its claim to the distrained property adjudicated in a plenary, but not in a summary, proceeding. §301.6331–1. (Sec. 6331, '54 Code.)

New Hampshire Fire Insurance Co., 362 U.S. 404, Ct. D. 1846, 1960–1 C.B. 629.

82.7 Exempt property; unemployment benefits. Notice of levy to collect delinquent Federal taxes should not be served upon a State employment commission for the purpose of reaching weekly benefits payable to an unemployed taxpayer. (Sec. 3692, '39 Code; Secs. 6331, 6334, '54 Code.)

Rev. Rul. 54–171, 1954–1 C.B. 282.

82.8 Future receipts. Where a taxpayer has an unqualified fixed right, under a trust or a contract, or through a chose in action, to receive periodic payments or distributions of property, a Federal lien for unpaid tax attaches to the taxpayer's entire right, and a notice of levy based on such lien is effective to reach, in addition to payments or deduction then due, any subsequent payments or distributions that will become due thereunder. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Rev. Rul. 55–210, 1955–1 C.B. 544.

82.9 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75–58, 1975–1 C.B. 374.

82.10 Joint bank accounts; bank's liability. The Service had a right to levy on joint bank accounts for delinquent income taxes owed by only one of the persons in whose names the accounts stood. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

National Bank of Commerce, 472 U.S., Ct. D. 2031, 1985–32 I.R.B. 11.

82.11 Joint checking account. A joint checking account is subject to levy only to the extent of a taxpayer's interest therein. Factors bearing on the question of the extent of a taxpayer's interest in a joint checking account include the nature of the tenancy created under State law, the source of the funds deposited, the intent of the person opening the joint account, and whether in actual practice the account was under the control of one party even though the other had authority to withdraw funds from the account. §301.6331–1. (Sec. 6331, '54 Code.)

Rev. Rul. 55–187, 1955–1 C.B. 197.

82.12 Priority in bankruptcy; levy upon assignee. A valid notice of levy served upon an assignee for the benefit of creditors, before the filing of a petition in bankruptcy but after the assigned assets were converted to cash, gave the Service constructive custody of the cash proceeds in the assignee's possession and neither the bankrupt nor the petitioner as receiver could assert a claim to the proceeds. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Phelps, 421 U.S. 330, Ct. D. 1971, 1975–1 C.B. 372.

82.13 Seizure from transferee of delinquent taxpayer. An automobile or other personal property disposed of by a delinquent taxpayer after notice of a Federal tax lien has been properly filed may be seized from a third party and sold under a warrant or distraint, provided such property can be identified as property covered by the lien. (Sec. 3692, '39 Code; Secs. 6331, 6334, '54 Code.)

Rev. Rul. 54–257, 1954–2 C.B. 429.

82.14 State employees' salaries. A state is a person, and its accrued salary obligations to state employees are subject to Federal tax levy. The state auditor who, under state law, is obligated

with respect to the salaries covered by the levies, is personally liable in a sum equal to the amount, not exceeding the delinquent taxes, which he refused to surrender to the Government but instead surrendered to taxpayers in defeat of the Government's levies. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Sims, 359 U.S. 108, Ct. D. 1837, 1959–1 C.B. 636.

82.15 Taxpayer's bank account. A bank is required to pay over only the funds actually on hand at the time the levy was served on a delinquent taxpayer's bank account and not the amount indicated in its acknowledgement of service. G.C.M. 4783 superseded. Amplified by Rev. Rul. 79–38. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Rev. Rul. 73–310, 1973–2 C.B. 408.

82.16 Taxpayer's bank account. A bank is required to treat uncollected funds in a customer's account as subject to levy if, by custom or agreement between the bank and the customer, the customer has a legal, fixed right to draw against uncollected funds. Rev. Rul. 73–310 amplified. §§301.6331–1, 301.6332–1. (Secs. 6331, 6332; '54 Code.)

Rev. Rul. 79–38, 1979–1 C.B. 406.

82.17 Wages; State employee. A notice of levy may be served on an instrumentality of a State to reach the accrued wages due an employee of that instrumentality in order to obtain satisfaction of his unpaid Federal taxes. I.T. 2405 modified. §301.6331–1. (Sec. 3710, '39 Code; Sec. 6331, '54 Code.)

Rev. Rul. 55–227, 1955–1 C.B. 551.

82.18 Warrantless seizures. The warrantless entry into the business office of a corporation that was a delinquent taxpayer's alter ego and seizure of the contents of the office under section 6331 violated the Fourth Amendment. However, warrantless automobile seizures in public streets, parking lots, or other open areas involved no invasion of privacy and were not unconstitutional. §301.6331–1. (Sec. 6331, '54 Code.)

G. M. Leasing Corp., 429 U.S. 338, Ct. D. 1983, 1977–1 C.B. 389.

Liability for tax

84.1 Bankruptcy; taxes withheld but unpaid. A bankrupt corporate officer's liability under section 6672 of the Code to pay over taxes withheld from employees of the bankrupt corporation is nondischargeable under section 17a(1)(e) of the Bankruptcy Act. §301.6672–1. (Sec. 6672, '54 Code.)

Sotelo, 436 U.S. 268, Ct. D. 1992, 1978–1 C.B. 441.

84.2 Bankruptcy; taxes withheld but unpaid; priority. A debtor corporation was kept in possession of its business by court order under Chapter XI of the Bankruptcy Act and did not comply with requirements that it deposit withheld taxes in a special tax account. The debtor was later adjudicated a bankrupt, and the U.S. asked the bankruptcy court to pay the amount of withheld taxes prior to payment of cost and expenses of the bankruptcy proceedings. *Held*, section 64(a)(1) of the Bankruptcy Act is an overriding statement of federal policy on priorities and provides that the first priority of payment from bankrupt estates shall be the costs and expenses of administering bankruptcy proceedings. (Sec. 7501, '54 Code.)

Randall, 401 U.S. 513, Ct. D. 1943, 1971–1 C.B. 414.

84.3 Bankruptcy; trustee's liability to withhold; priority. A trustee in bankruptcy is obligated to withhold, report, and pay over income and Social Security taxes from payment of priority claims for employee's wages earned prior to, but unpaid at the time of, an employer's bankruptcy. Proofs of claim on the part of the U.S. with respect to the taxes are not required and the taxes are entitled to second priority of payment under section 64(a) of the Bankruptcy Act. §§31.3102–1, 31.3402(a)–1. (Secs. 3102, 3402, 6011; '54 Code.)

Otte, 419 U.S. 43, Ct. D. 1969, 1975–1 C.B. 329.

84.4 Community property state; wages of married employee. The employees' tax imposed by the FICA attaches with respect to the total wages of a married employee in a community property State irrespective of the fact that such wages are community property of the husband and wife. S.S.T. 262 superseded. §§31.3101–1, 31.3102–1. (Secs. 3101, 3102; '54 Code.)

Rev. Rul. 71–116, 1971–1 C.B. 277.

84.5 Discharge or resignation of employee. Liability properly incurred for FICA taxes is not affected, nor does a right to refund or credit accrue to the company or employee, by reason of the employee's subsequent discharge or resignation. S.S.T. 102 superseded. §§31.3101–1, 31.3111–1, 31.6402(a)–2. (Secs. 3101, 3111, 6402; '54 Code.)

Rev. Rul. 68–492, 1968–2 C.B. 417.

84.6 Employee; illegal aliens. A employer who has both U.S. citizens and illegal aliens performing the same services but does not withhold federal employment taxes from the remuneration of the alien workers is not entitled to relief under section 530 of the Revenue Act of 1978. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 82–116, 1982–1 C.B. 152.

84.7 Employee; treatment; audit of predecessor. A corporation has met the "reasonable basis" test of section 530 of the Revenue Act of 1978, as extended, where the Service, on audit, did not challenge its predecessor's employment tax treatment of individuals as independent contractors rather than as employees. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 83–152, 1983–2 C.B. 172.

84.8 Employee; treatment; corporate officers. A corporation, whose officers perform functions within the scope of their duties as corporate officers and receive pay called "draws," is not entitled to relief under section 530 of the Revenue Act of 1978. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 82–83, 1982–1 C.B. 151.

84.9 Employee; treatment; doctors. A medical corporation that treated its doctors as employees during 1979 and 1980, is not entitled to relief under section 530 of the Revenue Act of 1978, when the doctors formed trusts in 1981 and the corporation made payments to the trusts for the doctors' services and did not treat the doctors as employees during that year. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–3. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 83–16, 1983–1 C.B. 235.

84.10 Employee; treatment; period extended indefinitely Instructions are provided for implementing the provisions of section 530 of the Revenue Act of 1978, as amended by section 269(c) of the Tax Equity and Fiscal Responsibility Act of 1982, which provides that an individual who has not been treated as an employee by a taxpayer for any period, will not be deemed to be an employee for that period unless the taxpayer has no reasonable basis for not treating the individual as an employee. Rev. Proc. 81–43 amplified and superseded. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Sec. 601.401, S.P.R.; Secs. 3102, 3111, 3301, 3403, '54 Code.)

Rev. Proc. 85–18, 1985–1 C.B. 518.

84.11 Employee; treatment; truck drivers. A trucking company that treated its drivers as employees after December 31, 1977, is not entitled to relief under section 530 of the Revenue Act of 1978 if it later treats the drivers as independent contractors. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Sec. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 84–161, 1984–45 I.R.B. 8.

84.12 Failure to collect or pay; responsible persons. A volunteer member of a board of trustees of a charitable organization may be liable for unpaid employment and withholding taxes in certain circumstances under section 6672. §§301.6671–1, 301.6672–1. (Secs. 6671, 6672; '54 Code.)

Rev. Rul. 84–83, 1984–1 C.B. 264.

84.13 FICA; American Institute in Taiwan employees. The FICA provisions are applicable to employees of the American Institute in Taiwan who, before becoming Institute employees, were employees of any agency of the U.S. covered by FICA and who, upon termination of their Institute employment, are entitled to reemployment or reinstatement with such agency. §31.3121(a)–1. (Secs. 892, 911, 912, 913, 3121; '54 Code.)

Rev. Rul. 80–208, 1980–2 C.B. 212.

84.14 FICA; Amish employer. A person of the Old Order Amish religious faith who employs other Amish to work on his farm and in his carpenter shop is required to file quarterly social security tax returns, withhold social security taxes from his employees, and pay the employer's share of social security taxes. The FICA tax is not an unconstitutional infringement upon freedom of religion. (Sec. 3102, '54 Code.)

Lee, 455 U.S., Ct D. 2011, 1982–1 C.B. 148.

84.15 FICA; employee; unwithheld taxes. An employee is liable for unwithheld FICA taxes after the employer's liability for the taxes has been determined under section 3509. §§31.3101–1, 31.3102–1. (Secs. 3101, 3102, 3509; '54 Code.)

Rev. Rul. 86–111, 1986–38 I.R.B. 5.

84.16 FICA; FUTA; caddies paid by club members. A club is not liable for the FICA and FUTA taxes with respect to remuneration paid to golf caddies either directly by club members or indirectly by the club acting as the agent of the members. S.S.T. 56 superseded. §§31.3111–4, 31.3301–1. (Secs. 3111, 3301; '54 Code.)

Rev. Rul. 69–26, 1969–1 C.B. 251.

84.17 FICA; medicare extended to federal employees. Guidance is provided, in the form of questions and answers, relating to the extension of the FICA hospital insurance tax to federal employees. §§31.3101–1, 31.3111–1, 31.3121(a)–1, 31.6302(c)–1, 31.6413(c)–1. (Sec. 601.401, S.P.R.; Secs. 3101, 3111, 3121, 6302, 6413, '54 Code.)

Rev. Proc. 83–30, 1983–1 C.B. 722.

84.18 FICA; parent and subsidiary corporations; prior years; guidelines. Guidelines are set forth for the collection of the taxes imposed by the FICA for a prior year in cases involving a parent and its subsidiary corporations where the wage limitation of section 3121(a)(1) of the Code was exceeded in such prior year with respect to a particular employee who performed substantial services for more than one of the corporations al-

though paid only by the parent. §§31.3101–1, 31.3111–1, 31.3121(a)–1, 31.6413(c)–1. (Sec. 601.104, S.P.R.; Secs. 3101, 3111, 3121, 6413, '54 Code.)

Rev. Proc. 74–16, 1974–1 C.B. 437.

84.19 FICA; RRTA; sick pay. A series of questions and answers explain the changes made by Pub. L. 97–123 regarding taxability of sick pay under the Federal Insurance Contributions Act and the Railroad Retirement Tax Act. §§31.3121(a)(2)–1, 31.3231(e)–1. (Sec. 601.401, S.P.R.; Secs. 3121, 3231, '54 Code.)

Rev. Proc. 82–20, 1982–1 C.B. 466.

84.20 FICA; tax paid by employer without deduction from wages. Payment by an employer of employee FICA tax without deduction from the employee's wages under an agreement between them constitutes "wages" for purposes of income tax withholding; however, for purposes of the FICA, no additional tax is applicable to the employee tax liability incurred by the employer. Also, if the employee has two or more employers he is entitled to the special refund of excess tax paid on an amount exceeding the maximum annual wage limitation. §§31.3101–1, 31.3102–1, 31.3121(a)(1)–1, 31.3401(a)–1, 31.6413(c)–1. (Secs. 3101, 3102, 3121, 3401, 6412; '54 Code.)

Rev. Rul. 74–75, 1974–1 C.B. 19.

84.21 FUTA; employer exempt or employees ineligible under State act. An employer is liable for FUTA taxes with respect to wages paid to his employees even though he is exempt from the state unemployment compensation tax or his employees are ineligible for unemployment compensation benefits. §§31.3301–1, 31.3306(a)–1. (Secs. 3301, 3306; '54 Code.)

Rev. Rul. 75–87, 1975–1 C.B. 325.

84.22 FUTA tax assumed by another. The Revenue Service has no objection to an agreement whereby the unemployment tax imposed on an employer is assumed by another, but the agreement does not affect the employer's liability if the other party fails to pay the tax. S.S.T. 30 superseded. §31.3306(a)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 68–518, 1968–2 C.B. 475.

84.23 Grand and subordinate fraternity lodges. The grand lodge and each subordinate lodge of a fraternity must report and pay any taxes imposed under FICA and FUTA as well as income tax withheld from wages of the employees. S.S.T. 76 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–273, 1968–1 C.B. 436.

84.24 Insurance company; agent-employee. Life insurance, disability, or retirement benefits received by an agent-employee of a life insurance company, which are excluded from wages under the FUTA does not prevent the agent from being considered as remunerated solely by way of commission. Accordingly, the company does not incur liability for the tax with respect to the remuneration paid during the calendar year to such an agent if he is otherwise remunerated solely by way of commission. §§31.3306(b)(2)–1, 31.3306(c)(14)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 67–238, 1967–2 C.B. 356.

84.25 Insurance company; commissions and guaranteed salary paid to agents; FUTA. Examples illustrate that the FUTA tax on remuneration paid to insurance agents and solicitors, compensated during the calendar year by both commissions and other compensation, and the exclusion provided by section 3306(c)(14) of the Code are determined for each pay period rather than on an annual basis. Rev. Ruls. 67–44 and 71–357 revoked. §31.3306(c)(14)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 75–81, 1975–1 C.B. 326.

84.26 Insurance company; service, production, and conservation commissions. An insurance company incurs liability for tax imposed by the FUTA with respect to remuneration paid in the form of production, conservation, and service commissions to its agent-employees for their services for such company, where the service commissions are based on the amount of insurance in force in the debit areas and the commissions are paid while the agents are on vacation. §§31.3306(b)(2)–1, 31.3306(c)(14)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 67–439, 1967–2, C.B. 357.

84.27 Limited partner. A limited partner who, upon dissolution of a limited partnership created under the Uniform Limited Partnership Act of California, received the return of property contributed to the capital of the partnership is liable for Federal employment taxes incurred by the partnership prior to its dissolution. §408.607. (Sec. 1420, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–210, 1954–1 C.B. 209.

84.28 Limited partner; withheld tax. A limited partner, under the laws of Indiana or of any other State having equivalent laws concerning limited partnerships, is not liable above and beyond his capital contribution for Federal withholding taxes due from such a partnership, providing there are no facts showing conduct on his part in connnection with the partnership business which would render him liable as a general partner. §§39.3797–5, 406.401. (Secs. 1623, 3797, '39 Code; Secs. 3403, 7701, '54 Code.)

Rev Rul. 54–213, 1954–1 C.B. 285.

84.29 Meals; lodging; cash paid to some employees. The proper method is set forth for determining liability for Federal employment taxes where some employees receive only meals and lodging and others receive, in addition, cash remuneration. S.S.T. 96 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–322, 1968–1 C.B. 416.

84.30 Partnership; FUTA. In situations where (1) the partners in a partnership employ two persons in each of two separate business establishments, or (2) a partnership, in addition to other employees, employs members of the partners' families, all persons performing services in the employ of the partnership, in each instance, are to be counted as employees in determining whether the partnership is an employer under FUTA. The family members are to be counted whether or not they receive remuneration for their services. §31.3306(c)(5)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 70–402, 1970–2 C.B. 232.

84.31 Partnership succeeded by corporation. A partnership that was succeeded by a corporation after the first two months of the calendar year is not required to file a return under the FUTA, but the corporation must file a return for the remaining ten months. S.S.T. 97 superseded. §§31.3306(a)–1, 31.6011(a)–3. (Secs. 3306, 6011; '54 Code.)

Rev. Rul. 68–241, 1968–1 C.B. 524.

84.32 Political organization. A committee of a political organization, is liable for the employment taxes, including withholding of income tax, with respect to the wages paid to its employees. S.S.T. 6 superseded. §§31.3121(b)–3, 31.3306(c)–2, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–190, 1968–1 C.B. 422.

84.33 Related corporations; common paymaster. Three related corporations, that concurrently employ the same ten individuals have the same treasurer who draws separate checks on each corporation's bank account for the employees' salaries. None of the corporations are authorized to disburse remuneration to employees for services performed on behalf of the other corporations and each corporation keeps its own payroll records. None of the three related corporations is a common paymaster. §§31.3121(s)–1, 31.3306(p)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 81–21, 1981–1 C.B. 482.

84.34 State bank converted to national bank. Where a State bank is converted into a national bank pursuant to section 35, title 12, U.S. Code, the national bank is considered the same employer and taxpayer as the State bank for employment tax purposes, including the filing of returns and the credit for contributions made by the State bank to State unemployment funds. S.S.T. 188 distinguished. §§31.3121(d)–2, 31.3301–1, 31.3302(a)–1, 31.3401(d)–1. (Secs. 3121, 3301, 3302, 3401; '54 Code.)

Rev. Rul. 68–63, 1968–1 C.B. 439.

84.35 Successor employer; statutory merger or consolidation. Where a statutory merger or consolidation takes place prior to the expiration of the first twenty weeks of a calendar year, the resultant corporation is subject to the FUTA tax with respect to the premerger or preconsolidation employment of individuals by the absorbed corporation and is entitled to the credits against such tax for contributions to State unemployment funds made by the absorbed corporation. The resultant corporation is also the same employer as the absorbed corporation for purposes of the FICA taxes and the withholding of income tax. §§31.3121(d)–2, 31.3301–1, 31.3302(a)–1, 31.3401(d)–1. (Secs. 3121, 3301, 3302, 3401; '54 Code.)

Rev. Rul. 62–60, 1962–1 C.B. 186.

84.36 Successor employer; Government maintenance contractor. An employer who is a successful bidder for a U.S. Air Force "on-base maintenance" contract may qualify as a successor employer to the prior contractor for purposes of FUTA and FICA annual wage limitations where the property used in the performance of the contracts was the same Government-owned property acquired for use through an inventory accounting arrangement. It is immaterial that no interest in the property used was acquired from the predecessor employer. §§31.3121(a)(1)–1, 31.3306(b)(1)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 68–105, 1968–1 C.B. 418.

84.37 Survey by state and Federal Government. Individuals engaged under a cooperative arrangment between a state and the Geological Survey of the Department of the Interior are held to be employees of the Geological Survey, and the Department of the Interior is responsible for determining whether their services constitute employment for Federal employment tax purposes. However, the state has control over the payment of the wages and is required to withhold income tax and file returns and pay the tax so withheld. §31.3121(d)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul 57–22, 1957–1 C.B. 318.

84.38 Third-party paying or providing wages. Procedures providing the conditions under which third parties financing employers' payrolls are liable for the taxes required to be withheld from employees' wages are updated. Rev. Proc. 67–41 superseded. §31.3505–1. (Sec. 601.401, S.P.R.; Sec. 3505. '54 Code.)

Rev. Proc. 78–13, 1978–1 C.B. 591.

84.39 Transferee; offer in compromise. The acceptance of an offer in compromise from one transferee does not compromise the liabilities

of the transferor or the other transferees; the amount paid is credited against the transferor's tax. The balance of the transferor's liability continues outstanding and may be collected from the other transferees or the transferor. The amount accepted is not credited against the liabilities of the transferees; however, their liabilities may be affected. G.C.M. 9252 superseded. §§301.6901–1, 301.7122–1. (Secs. 6901, 7122; '54 Code.)

Rev. Rul. 72–436, 1972–2 C.B. 643.

84.40 Trustee in bankruptcy; taxes incurred by debtor in possession. Where an arrangement proceeding under Chapter XI of the Bankruptcy Act is terminated and a petition in bankruptcy is filed before taxes become payable, a superseding trustee is not liable for interest on taxes incurred by the debtor in possession during the arrangement proceeding. Since no interest on any of the taxes accrued beyond the period of the arrangement proceeding, no interest could accumulate on a trust fund composed of withholding and cabaret taxes incurred by the debtor in possession which did not become payable until after the arrangement proceeding was terminated. The superseding trustee is liable for penalties for failure to file timely returns. §§1.6012–3, 301.6C11–1, 301.6601–1, 301.6659–1. (Secs. 6011, 6012, 6601, 6659; '54 Code.)

Nicholas, 384 U.S. 678, Ct. D. 1912, 1966–2 C.B. 511.

Liens

86.1 Bankruptcy; penalties. Federal tax penalties against the estate of a bankrupt are prohibited by Section 57(j) of the Bankruptcy Act, even though the penalties constitute liens perfected before bankruptcy. §301.6321–1. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Simonson, 369 U.S. 38, Ct. D. 1867, 1962–1 C.B. 302.

86.2 Certificate of discharge of property from lien. A certificate of discharge of property from a Federal tax lien will not be issued to applicants when the subject property has been sold at a foreclosure sale commenced by the holder of an incumbrance senior in right to a junior Federal tax lien and the applicable law provides that such proceeding discharges all junior liens. §301.6325–1. (Sec. 6325, '54 Code.)

Rev. Rul. 61–19, 1961–1 C.B. 715.

86.3 Certificates relating to liens. Information required in an application for a certificate of discharge of property by substitution of sale proceeds or an application for subordination of tax lien is set forth. §400.2–1. (Sec. 6325, '54 Code.)

Rev. Proc. 68–8, 1968–1 C.B. 754; Rev. Proc. 68–9, 1968–1 C.B. 756.

86.4 Extinguishment; state foreclosure proceedings. State proceedings to satisfy mortgages or deeds of trust through a foreclosure sale of the property involved, where applicable state law provided that all junior liens were discharged by such proceedings, effectively extinguished junior Federal tax liens, even though the U.S. was not a party thereto and was not required under state law to be a party. State law is effective to divest Government junior liens in cases such as these until Congress determines otherwise. (Secs. 7403, 7424; '54 Code.)

Brosnan, 363 U.S. 237, Ct. D. 1859, 1961–1 C.B. 733.

86.5 Future receipts. Where a taxpayer has an unqualified fixed right, under a trust or a contract, or through a chose in action, to receive periodic payments or distributions of property, a Federal lien for unpaid tax attaches to the taxpayer's entire right, and a notice of levy based on such lien is effective to reach, in addition to payments or deduction then due, any subsequent payments or distributions that will become due thereunder. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Rev. Rul. 55–210, 1955–1 C.B. 544.

86.6 Insurance policy; cash surrender value. The government's lien for unpaid taxes attaches to the cash surrender value of certain insurance policies when the assessment list is received by the Director of Internal Revenue. Where the insured taxpayer later flees the country, the lien may be foreclosed although such taxpayer is given notice by publication only. The court decree directing the insurer to pay the value of the policies to the U.S. will protect the insurer from further liability under the policy. (Secs. 3678, 3710, '39 Code; Secs. 6332, 7403, '54 Code.)

Metropolitan Life Insurance Co., 256 F.2d 17, Ct. D. 1833, 1959–1 C.B. 700.

86.7 Insurance policy; cash surrender value; marshaling of assets. A junior income tax lien on the cash surrender value of life insurance policies, the proceeds of which are payable to the insured's widow, attaches only to that portion of the cash surrender value not used in satisfaction of a senior lien on the "net proceeds of the policy when it becomes a claim by death." The court adopts the state rule and refuses to extend the equitable doctrine of marshaling assets where, under state law, proceeds of the policies are exempt from levy by creditors of the insured. §301.6321–1. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Meyer, 375 U.S. 233, Ct. D. 1886, 1964–1 (Part 1) C.B. 495.

86.8 Liability of bank; building and loan association; insurance company. The Government will not assert tort liability against an insurance company, bank, or domestic building and loan association acting in the ordinary course of business, even though they possess actual notice or knowledge of the existence of a Federal tax lien (such as from a previous unsatisfied levy), with respect to payments made to an insured or depositor (or his order). Rev. Ruls. 56–48, 57–367, 58–470, 63–54 superseded. §301.6321–1. (Sec. 6321, '54 Code.)

Rev. Rul. 67–162, 1967–1 C.B. 356.

86.9 Notice; certificates of discharge or release; acknowledgment. District Directors are not required to acknowledge notices of tax liens, certificates of release of lien, certificates of discharge of property subject to lien, and other instruments required or authorized to be filed under sections 6323 and 6325 of the Code. G.C.M. 26419 superseded. §§301.6323–1, 301.6325–1. (Secs. 6323, 6325; '54 Code.)

Rev. Rul. 71–466, 1971–2 C.B. 409.

86.10 Notice; foreclosure sale by senior lienor. Under the provisions of section 7425(b) and (c) of the Code, notices of sales on certain property to be sold as a result of foreclosure action are required to be furnished to District Directors where the U.S. Government has or claims a Federal tax lien. (Sec. 601.104, S.P.R.; Sec. 7425, '54 Code.)

Rev. Proc. 67–25, 1967–1 C.B.626.

86.11 Notice; place for filing; Cook County, Illinois. On and after July 1, 1967, the place for filing notices of Federal tax liens with respect to real property in Cook County, Illinois is the Recorder of Deeds for that county. Rev. Proc. 67–15 superseded. (Sec. 6323, '54 Code.)

Rev. Proc. 68–1, 1968–1 C.B. 741.

86.12 Notice; place for filing; corporations. For purposes of filing a notice of lien on personal property of a corporation, the term "principal executive office" used in section 6323(f)(2)(B) of the Code is that office where the major executive decisions affecting the business are made and is not necessarily the same as the term "principal office" used in Rev. Ru. 73–11

concerning the place for filing corporate income tax returns. (Sec. 6323, '54 Code.)

Rev. Rul. 74–571, 1974–2 C.B. 398.

86.13 Notice; place for filing; Iowa. Notices of Federal tax liens on personal property in Iowa including vehicles for which certificates of title are necessary are to be filed with the U.S. District Court for the judicial district in which the property is situated in accordance with section 6323(f)(1)(B) of the Code. Notices will continue to be filed with the Secretary of State if the taxpayer is a corporation or partnership, and in all other cases in the office of the recorder of the county where the taxpayer resides at the time of filing in accordance with Iowa Code as it existed prior to an amendment effective July 1, 1971. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Proc. 71–37, 1971–2 C.B. 573.

86.14 Notice; place for filing; Massachusetts. Due to a change in Massachusetts State law, the Service will continue to follow Rev. Rul. 77–61 and file notices of federal tax liens with respect to personal property in Massachusetts only in the office of the United States district court for the judicial district in which the taxpayer resided. Rev. Rul. 84–148 revoked. §301.6323(f)–1. (Sec. 6323, '54 Code.)

Rev. Rul. 85–89, 1985–26 I.R.B. 18.

86.15 Notice; place for filing; New Hampshire. Whenever it becomes necessary in New Hampshire to file a notice of Federal tax lien, or a certificate of release or discharge of such a lien, District Directors should file the same in the offices designated in the Revised Laws of New Hampshire. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Rev. Rul. 55–134, 1955–1 C.B. 196.

86.16 Notice; place of filing; New York State. Whenever it becomes necessary to file in the State of New York a notice of Federal tax lien, or a certificate of release or discharge of such lien, District Directors of Internal Revenue should file the same in the office of the county or other local official designated by State statute. (Sec. 3672, '39 Code; Sec. 6332, '54 Code.)

Rev. Rul. 54–93, 1954–1 C.B. 280.

86.17 Option rights. Federal tax liens attach to property only to the extent of the delinquent taxpayer's interest therein. Where a taxpayer has only an option to purchase real property at the time the Federal tax lien arises, the lien attaches to the option and not to the real estate. When the taxpayer's rights under an option terminate after the Federal tax lien has arisen, the rights of the U.S. in the option also terminate, since there is no longer any property in the option to which a lien can attach. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Rev. Rul. 54–154, 1954–2 C.B. 277.

86.18 Priority. In determining whether a Federal tax lien attaches to a fund composed of amounts owing to a general contractor from a property owner for construction work, where amounts are due subcontractors for materials and labor, the lower court must first determine that nature of the general contractor's rights to the fund. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Aquilino, 363 U.S. 509, Ct. D. 1856, 1960–2 C.B. 477.

86.19 Priority; advances under open-end mortgage. An advance of money by a mortgagee under an "open-end mortgage" providing for subsequent loans to a mortgagor secured by the original mortgage does not have priority over an inter-

vening recorded tax lien. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 56–41, 1956–1 C.B. 562.

86.20 Priority; attachment lien; Ohio. Under the given circumstances a Federal tax lien has priority over an attachment lien designated "an execution in advance" under Ohio law. (Sec. 3672, '39 Code; Sec. 6332, '54 Code.)

Acri, 348 U.S. 211, Ct. D. 1778, 1955–1 C.B. 547.

86.21 Priority; distress for rent; South Carolina. Under the given circumstances a Federal tax lien has priority over a landlord's distress for rent under South Carolina law. (Sec. 3672, '39 Code; Sec. 6332, '54 Code)

Scovil, 348 U.S. 218, Ct. D. 1779, 1955–1 C.B. 548.

86.22 Priority; Federal or municipal. The principles of law set out in *City of New Britain* will be followed by the Service when the Service's tax claim is asserted against the proceeds realized from the bankruptcy sale of personal property in instances where a circular priority situation develops because applicable provisions of section 67c of the Bankruptcy Act require the postponement in payment of the Federal tax lien or other statutory lien to the payment of costs of administration and wage claims. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul 61–101, 1961–1 C.B. 715.

86.23 Priority; garnishment lien; Texas. Under the given circumstances a Federal tax lien has priority over a garnishment lien and the garnishee insurance company's right under Texas Rules of Civil Procedure to attorney's fees. (Sec. 3672, '39 Code; Sec. 6332,'54 Code.)

Liverpool and London and Globe Insurance Co., Ltd., and Sunnyland Wholesale Furniture Co., 348 U.S. 215, Ct. D. 1780, 1955–1 C.B. 549.

86.24 Priority; judgment creditor; New York. In New York a judgment creditor acquires a lien against the personal property of a judgment debtor as of the time of the delivery of a writ of execution to the proper officer. Consequently, a notice of Federal tax lien filed subsequent to the delivery of the writ of execution is invalid as against the judgment creditor with respect to personal property levied upon and sold under the execution, even though the sale was made after the filing of such notice. Modified to make the above provisions inapplicable to creditors' rights with respect to debtors' personal property under the New York Civil Practice Law and Rules. §301.6323–1 (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Rev. Rul. 225, 1953–2 C.B. 467; Rev. Rul. 66–383, 1966–2 C.B. 502.

86.25 Priority; judgment creditor; New York. To qualify as a judgment creditor, a person must have obtained (in addition to the judgment) a lien against the judgment debtor's property under applicable State law prior to the filing of the notice of the Federal tax lien. In the State of New York, a judgment creditor acquires a lien against funds of the judgment debtor in the hands of a third party upon service of a subpoena and restraining order in supplementary proceedings under the New York Civil Practice Act. Modified to make the above provisions inapplicable to creditors' rights with respect to debtors' personal property under the New York Civil Practice Law and Rules. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Rev. Rul. 54–125, 1954–1 C.B. 282; Rev. Rul. 66–383, 1966–2 C.B. 502.

86.26 Priority; mortgagee's lien for attorney's fees; choateness test. A claim for attorney's fees arising from foreclosure proceedings is inchoate and unperfected until fixed in amount by the foreclosure decree. Therefore, the claim is subordinate to intervening Federal tax liens, notice of which was filed before the lien for attorney's fees matured. §§301.6321–1, 301.6323–1. (Secs. 6321, 6323; '54 Code.)

Pioneer American Insurance Co., 374 U.S. 84, Ct. D. 1883, 1963–2 C.B. 616.

86.27 Priority; mortgagee's lien for attorney's fee; choateness test; New Jersey. Where state law provided for the allowance, in a foreclosure action, of an attorney's fee fixed as a certain percentage of the amount adjudged to be paid to the mortgagee and taxed as costs in the action, the mortgagee's claim for the statutory attorney's fee arising out of foreclosure proceedings was inchoate until there was an adjudication of the sum of money due on the mortgage. Therefore, the claim was subordinate to a Federal tax lien, notice of which had been recorded prior to default by the mortgagor. §§301.6321–1, 301.6323–1. (Secs. 6321, 6323; '54 Code.)

Equitable Life Assurance Society of the United States, 384 U.S. 323, Ct. D. 1913, 1966–2 C.B. 499.

86.28 Priority; municipal liens; insolvent taxpayers. A town tax lien is a general lien in the absence of a judgement rendered by a court of record. Where the lien of the town and that of the Federal Government are both general and the taxpayer is insolvent, the Federal Government's lien has priority under section 3466 of the Revised Statutes. (Sec. 3672, '39 Code; Sec. 6332, '54 Code.)

Gilbert Associates, 345 U.S. 361, Ct. D. 1757, 1953–1 C.B. 474.

86.29 Priority; municipal liens; solvent taxpayers. The "first in time is the first in right" rule applies in determining priority of statutory Federal and municipal liens which attach to the same real estate, where no question of insolvency is involved. (Sec. 3672, '39 Code; Sec. 6332, '54 Code.)

City of New Britain, 347 U.S. 81, Ct. D. 1764, 1954–1 C.B. 277.

86.30 Priority; North Carolina. Construction of North Carolina law as giving a general contractor a property right in amounts owed by the owner of real estate for whom construction work has been performed only to the extent that the amounts exceed sums owed to subcontractors was not clearly erroneous or unreasonable. Accordingly, under North Carolina law, the Federal tax lien did not attach to that part of the fund sufficient to pay the subcontractors. (Sec. 6321, '54 Code.)

Durham Lumber Co., 363 U.S. 522, Ct. D. 1855, 1960–2 C.B. 391.

86.31 Priority; notice filed in U.S. District Court. A notice of tax lien filed in a U.S. District Court for the judicial district in which the taxpayer's real property was situated was superior to the rights of a mortgagee where (1) the notice of lien was filed before the mortgage was executed, and (2) a state law imposed a condition on filing by requiring tax lien notices to contain a description of the land upon which the lien was claimed, thereby failing to authorize a state office for filing. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Union Central Life Insurance Co., 368 U.S. 291, Ct. D. 1869, 1962–1 C.B. 328.

86.32 Priority; notice filed in U.S. District Court. A notice of lien filed under section 3672 of the 1939 Code in a Federal District Court has priority over a third-party puchaser where state law requires the U.S. to describe the real property involved to be acceptable for filing with the register of deeds. §301.6323–1. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Donnelly, 397 U.S. 286, Ct. D. 1936, 1970–1 C.B. 285.

86.33 Priority; purchase money security interest or mortgage. A purchase money security interest or mortgage valid under local law is protected even though it may arise after a notice of Federal tax lien has been filed. §301.6321–1. (Sec. 6321, '54 Code.)

Rev. Rul. 68–57, 1968–1 C.B. 553.

86.34 Priority; security interest; future advances. Guidelines to be applied in determining if a security interest arising from an optional advance is protected against a judgment lien creditor for purposes of section 6323(c)(1)(B) or (d)(2) of the Code, where the applicable local law is a version of Article 9 of the Uniform Commercial Code. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 72–290, 1972–1 C.B. 385.

86.35 Priority; spouse's dower or curtesy interest or statutory right. A spouse's dower or curtesy interest or statutory right has priority over a federal tax lien that arises after the taxpayer's marriage but before the taxpayer's death from a tax liability accruing before the marriage if, under the state law, the spouse's interest cannot be defeated by the other spouse or by a lien in favor of the other spouse's creditors. This holding also applies under section 3466 of the Revised Statutes, regarding priority of payments in situations where the federal government's claim against the decedent for unpaid taxes is not secured by a lien. §301.6321–1. (Sec. 6321, '54 Code.)

Rev. Rul. 79–399, 1979–2 C.B. 398.

86.36 Priority; trust mortgage. A trust mortgage is not such a mortgage as to give rise to a priority of lien to the trustees over a subsequently recorded Federal tax lien; the decision in *Gargill* will not be followed. §301.6323–1. (Sec. 6323, '54 Code.)

Rev. Rul. 56–592, 1956–2 C.B. 945.

86.37 Priority; trustee in bankruptcy. A trustee in bankruptcy is not a judgment creditor within the meaning of section 3672(a) of the Code and, therefore, the lien for Federal taxes is valid even though notice thereof has not been filed prior to bankruptcy. (Sec. 3672, '39 Code; Sec. 6323, '54 Code.)

Green, 124 F. Supp. 481, Ct. D. 1776, 1955–1 C.B. 545.

86.38 Priority; trustee in bankruptcy. A trustee in bankruptcy is not a judgement creditor within the meaning of section 3672(a) of the Code; consequently, where prior to bankruptcy assessment lists were received by the Collector and demand duly made on the taxpayer (later bankrupt) but no notice of lien was filed, the U.S. was entitled to priority in payment as a lienholder and not merely as a tax claimant. (Sec. 3672, '39 Code; Sec. 6332, '54 Code.)

England, 226 F. 2d 205, Ct. D. 1790, 1956–1 C.B. 696.

86.39 Priority; trustee in bankruptcy. A trustee in bankruptcy has the rights of a statutory "judgement creditor" and, as such, prevails over an unrecorded Federal tax lien. §301.6323–1. (Sec. 6323, '54 Code.)

Speers, 382 U.S. 266, Ct. D. 1905, 1966–1 C.B. 282.

86.40 Priority; Vermont. Where a state lien established the identity of a solvent debtor, the property subject to the lien, and the amount of the lien, it was sufficiently choate to prevail over a later-filed Federal lien where the state and Federal

liens are based on identical statutes. §301.6321–1. (Secs. 6321, 6322; '54 Code.)

Vermont, 377 U.S. 351, Ct. D. 1890, 1964–2 C.B. 493.

86.41 Property interests; time sharing condominium. A lien may attach under section 6321 to a delinquent taxpayer's interest in a time sharing condominium unit and related common areas but not to the interests of any other owners in that condominium unit or to the unit itself. §301.6321–1. (Sec. 6321, '54 Code.)

Rev. Rul. 79–55, 1979–1 C.B. 400.

86.42 Property subject to distraint. A Federal tax lien may be asserted against intangible property such as a debt owed to a taxpayer; service of a levy against the taxpayer's debtor is effective to give the government possession of the property, even though notice of the lien had not been filed in accordance with local state law. (Sec. 3672, '39 Code; Sec. 6332, '54 Code.)

Eiland, 223 F. 2d 118, Ct. D. 1789, 1956–1 C.B. 693.

86.43 Redemption of property; release of U.S. rights. The information required in an application for release of the U.S. right of redemption with respect to real property sold in a non-judicial sale is set forth. §400.5–1. (Sec. 7425, '54 Code.)

Rev. Proc. 68–10, 1968–1 C.B. 758.

86.44 Seizure from third party. An automobile or other personal property disposed of by a delinquent taxpayer after notice of a Federal tax lien has been properly filed may be seized from a third party and sold under a warrant for distraint, provided such property can be identified as property covered by the lien. (Sec. 3692, '39 Code; Secs. 6331, 6334, '54 Code.)

Rev. Rul. 54–257, 1954–2 C.B. 429.

Limitation period

88.1 Assessment of self-employment tax. The filing of a Form 1040 fully reporting income but not reporting any self-employment tax starts the running of the period of limitation for assessment of the self-employment tax. Rev. Rul. 79–39 distinguished. §§1.1401–1, 301.6501(c)–1. (Secs. 1401, 6017, 6501; '54 Code.)

Rev. Rul. 82–185, 1982–2 C.B. 395.

88.2 Assessment of social security taxes. The period of limitation on assessment of social security taxes is open after the expiration of 3 years from the date Form 1040 was filed by an employee who reported salary income on the Form 1040 but failed to report tip income that was not reported to the employee on Form 4070. Distinquished by Rev. Rul. 82–185. §§31.3101–1, 31.6011(a)–1, 31.6011(a)–7, 301.6501(c)–1. (Secs. 3101, 6011, 6501; '54 Code.)

Rev. Rul. 79–39, 1979–1 C.B. 435.

88.3 Assessments; advance payment of agreed deficiency plus interest. The Service is barred from assessing the payment of an agreed deficiency plus interest after the running of the period of limitation of assessment. However, the advance payment of the deficiency plus interest does not constitute an overpayment of tax so as to entitle the taxpayer to a refund. Rev. Rul. 74–580 distinguished. §§301.6401–1, 301.6402–1, 301.6501(a)–1. (Secs. 6401, 6402, 6501; '54 Code.)

Rev. Rul. 85–67, 1985–1 C.B. 364.

88.4 Assessments; extension; authority to sign consent. Factual situations illustrate which individuals are authorized to sign consents to extend the time for the assessment of tax. §§301.6061–1, 301.6501(c)–1. (Secs. 6061, 6501(c)–1; '54 Code.)

Rev. Rul. 83–41, 1983–1 C.B. 349.

88.5 Assessments; extension; authority to sign consent. More than one executor or administrator of an estate is permitted to sign a consent to extend the time to assess tax, so long as authorized by state law. Any one director authorized by state law to act for a dissolved corporation is allowed to sign the consent. Rev. Rul. 83–41 clarified and amplified. §§301.6061–1, 301.6501(c)–1. (Secs. 6061, 6501; '54 Code.)

Rev. Rul. 84–165, 1984–47 I.R.B. 22.

88.6 Assessments; FICA; unreported tip income. The FICA tax may not be assessed after the 3-year and within the 6-year periods of limitation provided by section 6501(a) and (e)(1), with respect to an employee's unreported tip income, in excess of 25 percent of gross income, not fraudulently or willfully omitted from a timely filed return. §§31.3101–3, 31.6011(a)–1, 301.6501(a)–1, 301.6501(e)–1. (Secs. 3101, 6011, 6501; '54 Code.)

Rev. Rul. 75–555, 1975–2 C.B. 485.

88.7 Assessments; Form 941 incomplete. Situations illustrate the validity of Employer's Quarterly Federal Tax Return, Form 941, filed with certain blank lines and "none" entries for purposes of the period of limitation on assessment and the addition to tax for failure to file a timely return. §§31.6011(a)–1, 31.6011(a)–4, 31.6011(a)–7, 301.6501(a)–1, 301.6651–1. (Secs. 6011, 6501, 6651; '54 Code.)

Rev. Rul. 72–161, 1972–1 C.B. 397.

88.8 Assessments; incomplete Form 940. A Form 940 indicating that no tax is due which does not conform with the regulations under the FUTA is not a return. If subsequently tax is found to be due, the filing of such form would not start the running of the statute of limitations or preclude the assertion of a delinquency penalty or assessment of the tax at any time. §301.6501(c)–1. (Sec. 6501, '54 Code.)

Rev. Rul. 57–554, 1957–2 C.B. 854.

88.9 Assessments; parent and subsidiaries; Form SS–10. Conditions are prescribed under which the Service will accept one properly executed Form SS–10, Consent to Fix Period of Limitation on Assessment of Employment Taxes, covering a parent corporation and any or all of its subsidiary corporations. Rev. Proc. 69–8 superseded. Clarified by Rev. Proc. 82–6. §§301.6501(c)–1, 301.6511(c)–1. (Sec. 601.105, S.P.R.; Secs. 6501, 6511, '54 Code.)

Rev. Proc. 72–38, 1972–2 C.B. 813.

88.10 Assessments; parent and subsidiaries; Form SS–10. Less than wholly owned subsidiaries may be included in multiple consents executed for parent and subsidiaries. Rev. Proc. 72–38 clarified. §§301.6501(c)–1, 301.6511(c)–1. (Sec. 601.105, S.P.R.; Secs. 6501, 6511, '54 Code.)

Rev. Proc. 82–6, 1982–1 C.B. 409.

88.11 Assessments; waiver of restrictions. A waiver of the restrictions on assessment and collection of a deficiency terminates the 90-day suspension of the period of limitations on assessment and collection and starts the 60-day suspension period. A notation added to the waiver form by the taxpayer which reserves the right to claim a refund is not a condition but an expression of the rights of the taxpayer at that time which does not invalidate the waiver. §§301.6213–1, 301.6503(a)–1. (Secs. 6213, 6503; '54 Code.)

Rev. Rul. 66–17, 1966–1 C.B. 272.

88.12 Claims; overpayment of FICA; employee meals. An employer's timely filed protective claim for refund of FICA tax will also protect its employees' individual claims filed after the period of limitations has expired. §301.6402–2. (Sec. 6402, '54 Code.)

Rev. Rul. 83–79, 1983–1 C.B. 345.

88.13 Claims; timeliness. Where the last day of the limitation period for filing a claim for credit or refund falls on a Saturday, Sunday, or legal holiday and the claim is filed on the next succeeding day which is not a Saturday, Sunday, or legal holiday, the amount of refund allowable is not limited even though no tax was paid within the three year period immediately preceding the date of actual filing of the claim. Rev. Rul. 57–354, which deals with the timeliness of claims for credit or refund under the 1939 and 1954 Codes in cases where no return was filed or where the return filed was delinquent, is superseded with respect to its application of the 1954 Code. §§39.322–7, 301.6511(a)–1, 301.6511(b)–1, 301.7503–1. (Sec. 322, '39 Code; Secs. 6511, 7503, '54 Code.)

Rev. Rul. 57–354, 1957–2 C.B. 913; Rev. Rul. 66–118, 1966–1 C.B. 290.

88.14 Claims; timeliness; assessment and payment after period expires. A claim for refund of a tax assessed and paid after the expiration of the period of limitations on assessment must be filed within two years of the date of payment. The decision in *Thompson* will no longer be followed. §§301.6401–1, 301.6402–2, 301.6501(a)–1, 301.6511(a)–1. (Secs. 6401, 6402, 6501, 6511; '54 Code.)

Rev. Rul. 74–580, 1974–2 C.B. 400.

88.15 Claims; timeliness; overpayment of FICA and FUTA; employee meals and lodging. Instructions are provided for employers making adjustments of overpaid FICA taxes, filing claims for refunds and credits of FICA and FUTA taxes overpaid, and for perfecting protective claims for refund previously filed as a result of the decision of the Supreme Court in *Rowan Companies, Inc.* §§31.6402(a)–2, 31.6402(a)–3, 31.6413(a)–1, 31.6413(a)–2, 301.6511(a)–1, 301.6513–1. (Sec. 601.602, S.P.R.; Secs. 6402, 6413, 6511, 6513, '54 Code.)

Rev. Proc. 81–69, 1981–2 C.B. 726.

88.16 Criminal prosecution; complaint showing probable cause. A timely filed complaint charging the taxpayer with willfully filing a false return is sufficient to bring about the nine-month extension of the period of limitations where it shows probable cause. (Sec. 6531, '54 Code.)

Jaben, 381 U.S. 214, Ct. D. 1902, 1965–2 C.B. 446.

88.17 Criminal prosecution; conspiracy to evade tax. A conspiracy to evade taxes by concealing holdout income from pinball machines continued beyond the filing of the last return where later overt acts, i.e., furnishing government agents with false records and statements, were committed within six years of the return of the indictment in order to conceal the holdout income until action thereon was barred, so that prosecution was timely under the six-year limitation period. §39.145–1. (Secs. 145, 3748, '39 Code; Secs. 6531, 7201, '54 Code.)

Forman, 361 U.S. 416, Ct. D. 1843, 1960–1 C.B. 695.

88.18 Criminal prosecution; fraudulent return. The six-year statute of limitations on a criminal prosecution for filing fraudulent returns begins to run from the date on which the return is actually filed where an extension of time has been granted by the Commissioner, and not from the original due date of the return. (Secs. 6513, 6531; '54 Code.)

Habig, 390 U.S. 222, Ct. D. 1921, 1968–2 C.B. 589.

88.19 Extension; authority to sign Form 907. A signed Form 2848, Power of Attorney, is insufficient to authorize a taxpayer's representative to sign Form 907, Agreement to Extend Period of Limitations, in the absence of that specific authorization. §301.6532–1. (Sec. 6532, '54 Code.)

Rev. Rul. 76–60, 1976–1 C.B. 387.

88.20 Extension; Form 872–A; assessments. Conditions are set forth with respect to the acceptance by Appeals officials and District Directors of Internal Revenue of Form 872–A, Special Consent to Extend the Time to Assess Tax. Form 872–A accepted in place of Form 872, relieves taxpayers and the Service from the inconvenience of obtaining renewal consents. Rev. Proc. 71–11 superseded. §301.6501(c)–1. (Sec. 601.105, S.P.R.; Sec. 6501, '54 Code.)

Rev. Proc. 79–22, 1979–1 C.B. 563.

88.21 Extension; restriction on consents. Procedures are set forth under which the scope of a consent, Form 872, extending the limitation period for assessment may be restricted to one or more issues. Modified by Rev. Proc. 77–6 to provide that the terms "automatic effect" and "related or automatic items" as used are changed to "a direct or indirect effect" and "consequential changes," respectively. Rev. Proc. 68–3 superseded. §301.6501(c)–1. (Sec. 601.105, S.P.R.; Sec. 6501, '54 Code.)

Rev. Proc. 68–31, 1968–2 C.B. 917; Rev. Proc. 77–6, 1977–1 C.B. 539.

88.22 Interest on refund. The filing of a claim on Form 843 for additional interest on a refund of tax overpayment does not stop the running of the six-year statute of limitations. This claim is no more than a request for additional interest. The only way a taxpayer can fully protect his right to interest is by filing a civil suit against the U.S. prior to the termination of the six-year statutory period. (Sec. 3771, '39 Code; Sec. 6611, '54 Code.)

Rev. Rul. 57–242, 1957–1 C.B. 452.

88.23 Mitigation provisions; related FICA and self-employment taxes. The applicability of the mitigation provisions is explained in situations in which wages were erroneously reported as self-employment income or self-employment income was erroneously reported as wages and correction of the effect of the error as to the self-employment tax and/or the employee FICA tax is permissible under other provisions of the Code. §§1.1401–1, 31.3101–1, 301.6521–1. (Secs. 1401, 3101, 6521; '54 Code.)

Rev. Rul. 78–127, 1978–1 C.B. 436.

88.24 Refund suits; waiver of registered notice of disallowance. A taxpayer may execute a waiver, Form 2297, Waiver of Registered Mail Notification of Claim Disallowance, of the requirement that a registered notice of disallowance of a claim be issued where an agreement is secured at the conclusion of an investigation or conference. A taxpayer may request the opportunity to execute the waiver at any time prior to issuance of the registered notice. §301.6532–1. (Sec. 601.602, S.P.R.; Sec. 6532, '54 Code.)

Rev. Proc. 57–12, 1957–1 C.B. 740.

88.25 Saturday last day. Claims will be considered to have been received on Saturday, March 15, 1952, if they were in fact received on March 17, 1952. §29.322–3. (Sec. 322, '39 Code; Sec. 6511, '54 Code.)

Rev. Rul. 110, 1953–1 C.B. 306.

88.26 Waiver in refund proceedings. Where a claim for refund is disallowed by means other than a registered notice of disallowance mailed to the taxpayer, unless the taxpayer has filed a written waiver of the requirement that he be mailed such registered notice of disallowance, an agreement to suspend the running of the statute of limitations for purposes of a suit based on the claim is not necessary. §301.6532–1. (Sec. 6532, '54 Code.)

Rev. Rul. 56–381, 1956–2 C.B. 953.

Ministers

92.1 Executive services for federation of churches. A federation of churches is a religious organization and executive services performed therefor by a minister are excepted from employment. He may elect self-employment coverage of such services and, if he does so elect, any income derived therefrom must be taken into consideration in computing self-employment income. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 65–187, 1956–1 C.B. 483.

92.2 Faculty members; church-related college. Services performed by ordained ministers as faculty members of a church-related college and whose duties do not include the conduct of religious worship or the ministration of a sacerdotal function, are excepted from employment. Remuneration for the services is excepted from income tax withholding, but is subject to self-employment tax, effective January 1, 1971. Rev. Rul 55–243 modified. §§1.1402(c)–5, 31.3121(b)(8)–1, 31.3401(a)(9)–1, 301.7805–1. (Secs. 1402, 3121, 3401, 7805; '54 Code.)

Rev. Rul. 71–7, 1971–1 C.B. 282.

92.3 Faculty members; colleges. Services performed by ordained ministers, as heads of religious departments, or as teachers and administrators, whose specific duties involve no ecclesiastical functions, on the faculty of a college which is not under the authority of a religious body constituting a church or church denomination are not excepted from employment under the FICA. However, services performed as a Chaplain and Professor of Religion at the college are excepted. Modified by Rev. Rul. 71–1. §408.215. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–243, 1955–1 C.B 490.

92.4 Faculty members; theological seminaries. Services performed by ordained ministers on the faculties of theological seminaries as teachers and administrators are excepted from employment. Clarified to provide that services performed by teachers in a school of theology operated by a university with no religious affiliation are not excepted. §§408.215, 31.3121(b)(8)–1. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–242, 1955–1 C.B. 489; Rev. Rul. 58–550, 1958–2 C.B. 724.

92.5 Foreign and home mission boards. Domestic or foreign missionary services performed by an ordained minister, regardless of whether or not such services are performed pursuant to an assignment by ecclesiastical superiors and regardless of the actual types of services performed, are considered to be in the exercise of his ministry and excepted from employment. §408.215. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–471, 1955–2 C.B. 615.

92.6 Hospital chaplains. Rules for determining whether a minister serving as a hospital chaplain at church-related hospitals and health and welfare institutions, non-church-related private nonprofit hospitals, and government hospitals is performing services in the exercise of his ministry for purposes of the FICA, income tax withholding, and self-employment tax. Distinguished by Rev. Rul. 71–337. §§1.1402(c)–5, 31.3121(b)(6)–1, 31.3121(b)(7)–1, 31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 71–258, 1971–1 C.B. 283.

92.7 Industrial chaplains. Services performed by an ordained minister as an industrial chaplain that do not involve the conduct of religious worship or the ministration of sacerdotal functions are not in the exercise of his ministry for purposes of the FICA and income tax withholding. Rev. Rul. 71–258 distinguished. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 71–337, 1971–2 C.B. 342.

92.8 Lay employee ordained. A lay employee of a church organization, who becomes an ordained minister must comply with the self-employment tax waiver procedure for ministers in order to continue his social security coverage, even though his duties are not changed. §§1.1402(e)–1, 31.3121(k)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–588, 1956–2 C.B. 566.

92.9 Missionaries; remuneration erroneously reported; validation. Procedures are set forth to be followed by lay missionaries and others so that the remuneration they erroneously reported as earnings from self-employment and on which they paid tax may be deemed to be net earnings from self-employment. §31.3121(b)(8)–2. (Sec. 601.401, S.P.R.; Sec. 1402, 3121, '54 Code.)

Rev. Proc. 61–19, 1961–2 C.B. 551.

92.10 Nonministerial services. Services performed by an ordained minister for a religious organization in connection with locating and purchasing sites for churches, planning and erecting new church buildings, maintaining the minutes and records of the organization, and attending to correspondence, are held to be services in the exercise of his ministry and are excepted from employment. §31.3121(b)(8)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 59–50, 1959–1 C.B. 253.

92.11 Parochial school teachers-ministers. Male graduates of theological colleges who serve as ministers of religion and teachers in church parochial schools are ordained ministers for self-employment tax purposes; however, female graduates serving as teachers of religion are not considered to be ordained ministers. Accordingly, such male teachers may elect coverage under Title II of the Social Security Act as self-employed persons pursuant to section 1402(e). The employee services performed by the women teachers may be covered under the waiver procedure provided in section 3121(k) of the Code. §1.1402(c)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 57–107, 1957–1 C.B. 277.

92.12 Retired Armed Forces chaplain; exemption from self-employment tax. A clergyman performing ministerial duties and retired from military service as a chaplain who expects to receive military retirement pay may qualify for exemption from self-employment tax with regard to his present earnings as a clergyman. §1.1402(c)–5. (Sec. 1402, '54 Code.)

Rev. Rul. 74–609, 1974–2 C.B. 276.

92.13 Self-employment tax; annuity plan contributions. Employer contributions of a church to an annuity plan are not taken into account in determining a minister's net earnings from self-employment to the extent that such amounts are excludable from his gross income. Distinguished by Rev. Rul. 78–6. §§1.1402(a)–2, 1.1402(a)–11. (Secs. 403, 1402; '54 Code.)

Rev. Rul. 68–395, 1968–2 C.B. 375.

92.14 Self-employment tax; contributions to individual retirement accounts. In deter-

mining a minister's net earnings from self-employment under section 1402 of the Code, contributions to an individual retirement account established by the minister, whose church does not have a qualified retirement plan for its employees, are neither excludable from gross income nor deductible as a trade or business expense. Rev. Rul. 68–395 distinguished. §1.1402(a)–2. (Secs. 408, 1402; '54 Code.)

Rev. Rul. 78–6, 1978–1 C.B. 558.

92.15 Self-employment tax; election. Ministers-members of religious orders, and Christian Science Practitioners who filed Form 4361 claiming exemption from social security coverage solely for economic considerations have not made a valid election and are subject to self-employment tax for years after 1967. (Sec. 1402, '54 Code.)

Rev. Rul. 70–197, 1970–1 C.B. 181.

92.16 Self-employment tax; election. A member of a religious sect opposed to acceptance of benefits of any private or public insurance who purchases a retirement annuity from an insurance company is not eligible for exemption from self-employment tax. §1.1402(h)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 77–88, 1977–1 C.B. 266.

92.17 Self-employment tax; exemption. A minister who in 1973 and 1974 had net earnings from self-employment of $400 or more, some of which was from the performance of ministerial services, and during 1976 filed Form 4361 applying for exemption from the self-employment tax is not entitled to exemption. §1.1402(e)–2A. (Sec. 1402, '54 Code.)

Rev. Rul. 77–87, 1977–1 C.B. 266.

92.18 Self-employment tax; exemption for religious reasons. A duly ordained, commissioned, or licensed minister of a church may, on religious grounds, be granted an exemption from social security coverage and the self-employment tax provided the minister is able to establish that the church qualifies for exemption as a religious organization described in section 501(c)(3). Clarified by Rev. Rul. 80–59. §1.1402(e)-2A. (Sec. 1402, '54 Code.)

Rev. Rul. 76–415, 1976–2 C.B. 255.

92.19 Self-employment tax; exemption for religious reasons. The church referred to in Form 4361, Application for Exemption from Self-Employment Tax for Use of Ministers, Members of Religious Orders and Christian Science Practitioners, must be the church that ordained, commissioned, or licensed the minister who is applying for the exemption and must be a church described in section 170(b)(1)(A)(i). Rev. Rul. 76–415 clarified. §1.1402(e)–2A. (Sec. 1402, '54 Code.)

Rev. Rul. 80–59, 1980–1 C.B. 191

92.20 Services in headquarters office. Secular services performed by a minister in an executive capacity in the headquarters office of a church denomination are services performed in the exercise of his ministry and are excepted from employment under the FICA. Routine office services performed by a minister do not qualify as services performed in the exercise of his ministry. §31.3121(b)(8)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 57–129, 1957–1 C.B. 313.

92.21 Teachers or administrators of college. The rental allowance of an ordained minister or any other minister serving on the faculty as a teacher or administrator at a college which is, in practice, operated as an integral agency of a church is excludable from gross income. Such ministers are, however, subject to self-employment tax on remuneration paid by the college but will not be required to report such remuneration as net earnings from self-employment for any taxable year beginning before January 1, 1971. Moreover, their services are excepted from employment for FICA purposes and withholding under the FICA is not applicable to remuneration paid by the college after December 31, 1970. §§1.1402(c)–5, 31.3121(b)(8)–1, 301.7805–1. (Secs. 1402, 3121, 7805; '54 Code.)

Rev. Rul. 70–549, 1970–2 C.B. 16.

92.22 Unordained religious worker. Unordained members of a religious denomination which provides for ordination of ministers, commissioned by a church or a related religious organization without investing them with the authority of ordained ministers, do not qualify as duly ordained, commissioned, or licensed ministers of a church for purposes of the FICA, SECA and income tax withholding. Modified by Rev. Rul. 78–301. §§1.1402(a)–11, 31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 65–124, 1965–1 C.B. 60.

92.23 Unreimbursed expenses; self-employment tax. Unreimbursed business expenses (other than travel or transportation expenses) incurred by a duly ordained minister who is an employee of a church and who is subject to self-employment tax are not deductible from gross income in arriving at adjusted gross income. The unreimbursed expenses are deductible in computing the minister's self-employment tax. §1.1402(a)–2. (Secs. 62, 1402; '54 Code.)

Rev. Rul. 80–110, 1980–1 C.B. 190.

92.24 Voluntary coverage; release from poverty oath. A duly ordained minister of a church who is required to take an oath of poverty to meet the requirements in a monastic order but, because of an appointment to a position outside the monastery which is not subject to monastic jurisdiction, is released from his oath of poverty by such order, may qualify for voluntary self-employment coverage. Any remuneration received for the performance of services will be includable in computing net earnings from self-employment. §1.1402(e)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 58–229, 1958–1 C.B. 331.

92.25 Withholding; outside earnings remitted to order. Amounts received by members of exempt religious order, not acting as agents of the order, for work performed outside the religious community and paid over, in full or part, to the order, at its direction, are subject to the FICA and income tax withholding. Clarified by Rev. Rul. 77–290. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 61, 170, 3121, 3401; '54 Code.)

Rev. Rul. 76–323, 1976–2 C.B. 18.

92.26 Withholding; outside earnings remitted to religious order or organization. Remuneration remitted to a religious organization or order by a member who has taken a vow of poverty and is instructed by superiors to obtain outside employment is subject to FICA and income tax withholding. Remuneration remitted to the organization or order by another member who has taken a vow of poverty and is instructed to perform services in the business office of the supervising church is not subject to FICA or income tax withholding. O.D. 119 superseded and Rev. Rul. 76–323 clarified. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 61, 501, 511, 3121, 3401; '54 Code.)

Rev. Rul. 77–290, 1977–2 C.B. 26; Rev. Rul. 79–132, 1979–1 C.B. 62; Rev. Rul. 80–332, 1980–2 C.B. 34.

92.27 Withholding; outside employment. Ordinary nonreligious services performed for a manufacturing company on the company's assembly line by an ordained minister, who had worked several years for the company prior to receiving written instructions from the church to do so, are not "in the exercise of his ministry," and the remuneration received for the services is not excepted from income tax withholding.

§§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 78–229, 1978–1 C.B. 305.

92.28 Withholding; voluntary plan. Voluntary plans for withholding income tax from a minister's salary cannot be approved by the Revenue Service; further, amounts paid by a church toward its minister's personal tax obligations are includible in his gross income for income and self-employment tax purposes §§1.1401–1, 31.3402(a)–1. (Secs. 1401, 3402, '54 Code.)

Rev. Rul. 68–507, 1968–2 C.B. 485.

Offers in compromise

94.1 Acceptance; inspection. The jurisdictional changes pertaining to the consideration and disposition of offers in compromise and general guidelines relating to the acceptability of an offer in compromise are set forth. Rev. Procs. 64–44 and 66–53 superseded. §301.7122–1. (Sec. 601.203, S.P.R.; Sec. 7122, '54 Code.)

Rev. Proc. 80–6, 1980–1 C.B. 586.

94.2 Forms. Form 656, Offer in Compromise, will be used in submitting all offers in compromise. It superseded prior Form 656 used for submitting cash offers and Form 656–C used for submitting deferred payment offers. (Sec. 7122, '54 Code.)

Rev. Proc. 57–41, 1957–2 C.B. 1119.

94.3 Transferee liability. The acceptance of an offer in compromise from one transferee does not compromise the liabilities of the transferor or the other transferees. The amount paid is credited against the transferor's tax. The balance of the transferor's liability continues outstanding and may be collected from the other transferees or the transferor. The amount accepted is not credited against the liabilities of the other transferees, however, their liabilities may be affected. G.C.M. 9252 superseded. §§301.6901–1, 301.7122–1. (Secs. 6901, 7122; '54 Code.)

Rev. Rul. 72–436, 1972–2 C.B. 643.

94.4 Written protest. Effective March 1, 1968, the Appellate Division will consider certain unagreed cases and offers in compromise without requiring the taxpayer to file a written protest. (Sec. 601.106, S.P.R.)

Rev. Proc. 68–4, 1968–1 C.B. 746.

Officers and employees of the Service

96.1 Testimony in private litigation. Guidelines for persons requesting the production of records or the testimony of officers or employees of the Service in litigation in which the Federal Government is not a party. Rev. Proc. 66–43 superseded. §§301.6103(a)–2, 301.9000–1. (Secs. 6103, 7213; '54 Code.)

Rev. Proc. 73–6, 1973–1 C.B. 752.

Overassessments

(See: Refunds and credits)

Overpayments

98.1 Adjusted interest rate. The interest rate to be charged on underpayments or paid on overpayments after January 1976 will be determined not later than October 15, 1975, based on the adjusted prime rate charged by commercial

banks during September 1975. (Sec. 6621, '54 Code.)

Rev. Rul. 75–165, 1975–1 C.B. 375.

98.2 Adjusted interest rate. The adjusted rate of interest on underpayments and overpayments has been established under section 6621(a)(1). §301.6621–1. (Sec. 6621, '54 Code.)

Rev. Rul. 75–487, 1975–2 C.B. 488.
Rev. Rul. 77–411, 1977–2 C.B. 480.
Rev. Rul. 79–366, 1979–2 C.B. 402.
Rev. Rul. 81–260, 1981–2 C.B. 244.
Rev. Rul. 82–182, 1982–2 C.B. 399.
Rev. Rul. 83–76, 1983–1 C.B. 354.
Rev. Rul. 83–171, 1983–2 C.B. 252.
Rev. Rul. 84–66, 1984–1 C.B. 260.
Rev. Rul. 84–159, 1984–44 I.R.B. 12.
Rev. Rul. 85–47, 1985–1 C.B. 367.
Rev. Rul. 85–169, 1985–44 I.R.B. 15.
Rev. Rul. 86–57, 1986–16 I.R.B. 4.
Rev. Rul. 86–146, 1986–50 I.R.B. 5.

98.3 FICA; claim; overpayment on employee meals and lodging; employee consents. An employer is not required to secure the written consent of its employees before filing a claim for FICA tax when the employer paid both its own and its employees' shares of FICA tax without making any deduction from the employees' pay. §§31.6205–1, 31.6402(a)–1, 31.6413(a)–2. (Secs. 119, 6205, 6402, 6413, '54 Code.)

Rev. Rul. 83–136, 1983–2 C.B. 244.

98.4 FICA; employee meals; refund claims. An employer's timely filed protective claim for refund of FICA tax will also protect its employees' individual claims filed after the period of limitations has expired. §301.6402. (Sec. 6402, '54 Code.)

Rev. Rul. 83–79, 1983–1 C.B. 345.

98.5 FICA and FUTA; overpayment on employee meals and lodging. Instructions are provided for employers making adjustments of overpaid FICA taxes, filing claims for refunds and credits of FICA and FUTA taxes overpaid, and for perfecting protective claims for refund previously filed as a result of the decision of the Supreme Court in *Rowan Companies, Inc.* §§31.6402(a)–2, 31.6402(a)–3, 31.6413(a)–1, 31.6413(a)–2, 301.6511(a)–1, 301.6513–1. (Sec. 601.602, S.P.R.; Secs. 6402, 6413, 6511, 6513, '54 Code.)

Rev. Proc. 81–69, 1981–2 C.B. 726.

98.6 Interest; changes under 1954 Code. The provisions of the Internal Revenue Code of 1954 relating to interest on underpayment, nonpayment, overpayment, or extension of time for payment, of tax are explained. (Secs. 6601, 6611; '54 Code.)

Rev. Rul. 54–426, 1954–2 C.B. 39.

98.7 Interest; credit against deficiency assessment. Taxpayers who have been charged interest on amounts satisfied by the crediting of overpayments of tax may obtain appropriate adjustments or refunds upon request. These will be allowed retroactively but a request for adjustment or refund will be given effect for all open years and may result in a financial detriment to some taxpayers. (Sec. 6611, '54 Code.)

Rev. Rul. 56–574, 1956–2 C.B. 959.

98.8 Interest; delayed delivery. No interest is allowable, beyond the date prescribed in section 6611(b)(2), for the period a refund check is undelivered without fault of the Government. However, interest is allowable for the period of delayed delivery due to a check having been erroneously drawn or the overpayment having been excessively offset against another agency's claims. Rev. Ruls. 55–477, 56–445, and 57–82 superseded. §301.6611–1. (Sec. 6611, '54 Code.)

Rev. Rul. 76–74, 1976–1 C.B. 388.

98.9 Interest; delayed refund check. Interest on an overpayment will not be allowed for the period during which the government is delayed, under conditions caused by the taxpayer, in effecting the delivery of a refund check. (Sec. 6611, '54 Code.)

Rev. Rul. 56–445, 1956–2 C.B. 958.

98.10 Interest; limitation period on refund. The filing of a claim on Form 843 for additional interest on a refund of tax overpayment does not stop the running of the six-year statute of limitations. This claim is no more than a request for additional interest. The only way a taxpayer can fully protect his right to interest is by filing a civil suit against the U.S. prior to the termination of the six-year statutory period. (Sec. 3771, '39 Code; Sec. 6611, '54 Code.)

Rev. Rul. 57–242, 1957–1 C.B. 452.

98.11 Interest; overpayment of FICA. With respect to overpaid FICA tax the Service may refund to the employer both the employer's and the employee's share of FICA tax if the employee furnishes a written consent and statement to the employer. The Service may also refund the employer's share if the employee does not furnish a consent and statement after the employer has made a reasonable attempt to obtain them. §§31.6402(a)–2, 31.6413(a)–2, 31.6413(b)–1, 301.6611–1. (Secs. 6402, 6413, 6611; '54 Code.)

Rev. Rul. 81–310, 1981–2 C.B. 241.

98.12 Interest; overpayment of withholding tax. A refund claimed on a third quarter Form 941, resulting from income tax overwithheld in the first quarter and repaid to the employee in the third quarter, accrues interest from the due date of the third quarter return even though that return was filed late. §§31.6413(a)–2, 301.6513–1, 301.6611–1. (Secs. 6413, 6513, 6611; '54 Code.)

Rev. Rul. 75–315, 1975–2 C.B. 482.

98.13 Interest on interest. When interest was allowed on an overpayment of tax and was later adjusted for the reason that it was determined to be insufficient, a taxpayer will not be entitled to interest compensating him for the delay in the payment of the amount determined to be additional interest on the overpayment. (Sec. 6611, '54 Code.)

Rev. Rul. 57–271, 1957–1 C.B. 453.

98.14 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75–58, 1975–1 C.B. 374.

98.15 Interest rate; daily compounding rules. Uniform rates and procedures are set forth for computation of interest under the compounding rules established under section 6622. §301.6621–1. (Sec. 601.104, S.P.R.; Secs. 6621, 6622, '54 Code.)

Rev. Proc. 83–7, 1983–1 C.B. 583.

98.16 Restricted interest. Guides and instructions for the computation of restricted interest are set forth. Modified to provide that rules regarding restriction of interest are not applicable where one taxpayer's overpayment is credited, with his consent, to another taxpayer's deficiency. Modified by Rev. Procs. 83–58 and 84–66. §§301.6601–1, 301.6611–1. (Sec. 601.104, S.P.R.; Sec. 3771, '39 Code; Secs. 6601, 6611, '54 Code.)

Rev. Proc. 60–17, 1960–2 C.B. 942; Rev. Proc. 65–20, 1965–2 C.B. 1003.

98.17 Restricted interest. If an overpayment is applied as credit to unpaid interest, penalty, or addition to tax for the same year and type of tax, interest is allowed from the date of overpayment to the date of assessment of the amount to which the credit is applied. Rev. Proc. 60–17 modified. §301.6611–1. (Sec. 601.104, S.P.R.; Sec. 6611, '54 Code.)

Rev. Proc. 83–58, 1983–2 C.B. 575.

98.18 Self-employment; claim for refund. Form OAR–7000, Notice of Determination of Self-Employment Income, furnished by the Social Security Administration, is not considered a claim for refund of overpaid self-employment tax. A taxpayer should file a claim on Form 843 before the expiration of the statutory period of limitation. §301.6402–2. (Sec. 6402, '54 Code.)

Rev. Rul. 56–297, 1956–1 C.B. 564.

Payment of tax

(See also: Government depositary)

100.1 Partial payment; deficiency; allocation. A partial payment of assessed tax, penalty, and interest made by a cash-method taxpayer with directions as to its application will be so applied. A partial payment, on assessed deficiencies or deficiencies mutually agreed to but unassessed, received without instructions for its application will be applied to tax, penalty, and interest in that order, starting with the earliest period. Not applicable to withheld employment taxes. Rev. Rul. 58–239 superseded. Modified by Rev. Rul. 79–284. §301.6601–1. (Sec. 6601, '54 Code.)

Rev. Rul. 73–305, 1973–2 C.B. 43.

100.2 Partial payment of deficiencies; allocation. Voluntary partial payments of assessed tax, penalty, and interest will be applied as designated by the taxpayer. If no designation is made, the payments will be allocated to tax, penalty, and interest in a manner serving the best interest of the Service. Rev. Rul. 73–305 modified. §301.6601–1. (Secs. 163, 6601; '54 Code.)

Rev. Rul. 79–284, 1979–2 C.B. 83.

100.3 Real property. A transfer of real property to the Federal Government is not an acceptable method of payment of Federal taxes; they must be paid in money or its equivalent. §§301.6311–1, 301.7506–1. (Secs. 6151, 6311, 7506; '54 Code.)

Rev. Rul. 76–350, 1976–2 C.B. 396.

Penalties

102.1 Appeal of assessments. Procedures for appeal of assessments of certain additions to tax, additional amounts, and penalties are now found in section 601.106 of the Statement of Procedural Rules. Rev. Proc. 78–1 is obsolete. §301.7805–1. (Sec. 601.104, S.P.R.; Sec. 7805, '54 Code.)

Rev. Proc. 86–10, 1986–8 I.R.B. 25.

102.2 Bankruptcy; non-pecuniary loss penalties. Collectibility of post-petition interest and non-pecuniary loss penalties claimed against the estate of a bankrupt in proceedings under the Bankruptcy Act and in general receivership or assignment for the benefit of creditor cases. G.C.M. 21860 and Rev. Rul. 62–96 superseded. §§301.6601–1, 301.6651–1—301.6653–1, 301.6656–1—301.6658–1, 301.6672–1—301.6674–1, 301.6676–1, 301.6871(a)–2. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 68–574, 1968–2 C.B. 595.

102.3 Bankruptcy; non-pecuniary loss penalties. Non-pecuniary loss penalties and post-petition interest will not be set off against funds due a bankrupt or insolvent taxpayer or estate by the U.S. where such penalties or interest would not be collectible as a claim against the bankrupt or insolvent estate. Rev. Rul. 56–162 revoked. §§301.6601–1—301.6871(a)–2 and intermediate sections. (Secs. 6601, 6651—6653, 6656—6658, 6672—6674, 6676, 6871; '54 Code.)

Rev. Rul. 71–31, 1971–1 C.B. 408.

102.4 Bankruptcy; penalties. Federal tax penalties against the estate of a bankrupt are prohibited by Section 57(j) of the Bankruptcy Act, even though the penalties constitute liens perfected before bankruptcy. §301.6321–1. (Sec. 3670, '39 Code; Sec. 6321, '54 Code.)

Simonson, 369 U.S. 38, Ct. D. 1867, 1962–1 C.B. 302.

102.5 Barred from assessment; offset against overpayment. Interest and penalties barred by the statute from assessment will be considered in determining the amount of an overpayment allowable on the basis of a timely filed claim for the same taxable year and the same type of tax. §301.6402–1. (Sec. 3770, '39 Code; Sec. 6402, '54 Code.)

Rev. Rul. 56–492, 1956–2 C.B. 949.

102.6 Delinquency; assignee for benefit of creditors; failure to file return. An assignee of an insolvent debtor receiving assets under a general assignment for creditors may be liable for the delinquency penalty if he fails to file a return due after the assignment, even though the facts giving rise to the requirement for the return occurred before the assignment. §408.909. (Sec. 3612(d), '39 Code; Sec. 6651, '54 Code.)

Rev. Rul. 56–158, 1956–1 C.B. 596.

102.7 Delinquency; changes under 1954 Code. The effect of the delinquency penalty provisions of section 6651 of the 1954 Code is explained and attention is directed to the fact that there are no provisions in the 1954 Code corresponding to sections 1631 and 3655(b) of the 1939 Code. (Sec. 6651, '54 Code.)

Rev. Rul. 54–427, 1954–2 C.B. 42.

102.8 Delinquency; preparation by District Director. The preparation and execution of a Form 941 by the District Director stops the running of the period of delinquency. §§301.6020–1, 301.6651–1. (Secs. 6020, 6651; '54 Code.)

Rev. Rul. 69–397, 1969–2 C.B. 263.

102.9 Delinquency; return and payment of withheld income tax. If an employer, after the 30th day of the month following the calendar quarter for which his return of withheld income tax is made, ascertains a slight error in his computation of the amount of tax due and when filing his return on or before the 10th day of the second month following such quarter accompanies the return and depositary receipts with a check covering the minor adjustment, no penalty for delinquent filing will be asserted. §406.605. (Sec. 1631, '39 Code; Sec. 6651, '54 Code.)

Rev. Rul. 54–45, 1954–1 C.B. 224.

102.10 Failure to collect or pay tax; responsible persons. A volunteer member of a board of trustees of a charitable organization may be liable for unpaid employment and withholding taxes in certain circumstances under section 6672. §§301.6671–1, 301.6672–1. (Secs. 6671, 6672; '54 Code.)

Rev. Rul. 84–83, 1984–1 C.B. 264.

102.11 Failure to deposit taxes. The 5-percent failure-to-deposit penalty will be imposed on the total tax reported on Form 941 for an employer whose aggregate tax did not exceed $200 until the third month of the quarter and who, without reasonable cause, did not deposit the total tax by the return due date. §§31.6302(c)–1, 301.6656–1 (Secs. 6302, 6656; '54 Code.)

Rev. Rul. 75–488, 1975–2 C.B. 497.

102.12 Failure to file quarterly return; failure to withhold tax. Interest is assessable against an employer who fails to deduct and withhold tax from the wages of an employee as required by section 3402 of the Code, even though the employee subsequently files an income tax return and satisfies his income tax liability. Modified to provide that where a delinquency penalty is to be assessed against an employer under section 6651 for failure to file the required quarterly tax return and the provisions of section 3402(d) are applicable, such penalty should be computed from the due date of the return to the date it is filed. §§31.3402(d)–1, 301.6601–1, 301.6651–1. (Secs. 3402, 6601, 6651; '54 Code.)

Rev. Rul. 58–577, 1958–2 C.B. 744; Rev. Rul. 66–113, 1966–1 C.B. 244.

102.13 Failure to file returns; prepared and executed by Service. A return prepared and executed by the Service under section 6020(b) stops the running of the delinquency period for purposes of additions under section 6651(a)(1) for failure to file; furthermore, additions under section 6651(a)(2) for failure to pay the amount shown on the return are not applicable. §§301.6020–1, 301.6651–1. (Secs. 6020, 6651; '54 Code.)

Rev. Rul. 76–562, 1976–2 C.B. 430.

102.14 Failure to file returns; trustee in bankruptcy. Where an arrangement proceeding under Chapter XI of the Bankruptcy Act is terminated and a petition in bankruptcy is filed before taxes become payable, a superseding trustee is not liable for interest on taxes incurred by the debtor in possession during the arrangement proceeding. Since no interest on any of the taxes accrued beyond the period of the arrangement proceeding, no interest could accumulate on a trust fund composed of withholding and cabaret taxes incurred by the debtor in possession which did not become payable until after the arrangement proceeding was terminated. The superseding trustee is liable for penalties for failure to file timely returns. §§301.6011–1, 301.6601–1, 301.6659–1. (Secs. 6011, 6012, 6601, 6659; '54 Code.)

Nicholas, 384 U.S. 678, Ct. D. 1912, 1966–2 C.B. 511.

102.15 Failure to file timely return; reliance on agent; reasonable cause. The failure to file a timely tax return is not excused by the taxpayer's reliance on an agent, and such reliance is not reasonable cause for late filing under section 6651(a)(1). §301.6651–1. (Sec. 6651, '54 Code.)

Boyle, 469 U.S., Ct. D. 2030, 1985–1 C.B. 372.

102.16 Failure to pay; extension of time to file. The penalty imposed by section 6651 of the Code for failure to pay tax timely, will be applied after November 24, 1975, to any Federal tax for which a taxpayer is granted an extension of time to file a return. §301.7805–1. (Secs. 6081, 6151, 6161, 7805; '54 Code.)

Rev. Rul. 75–364, 1975–2 C.B. 466.

102.17 Failure to pay tax; deficiency in deposit. The Service is unable to approve any plan or method where taxes required to be deposited may be deposited in an amount less than the amount of taxes actually collected. However, the penalty will not be imposed if the deficiency in the amount deposited is less than one percent. (Sec. 6302, '54 Code.)

Rev. Rul. 55–271, 1955–1 C.B. 196.

102.18 Failure to pay tax; withheld tax used in business. The 100 percent penalty should be assessed in a case where money withheld from employees as taxes, in lieu of being paid over to the Government, was knowingly and intentionally used to pay the operating expenses of a business, or for other purposes. (Sec. 2707(a), '39 Code; Sec. 6671, '54 Code.)

Rev. Rul. 54–158, 1954–1 C.B. 247.

102.19 Failure to pay withheld taxes; subsequent corporate officer. An individual who assumes control of corporate affairs when no funds are available to satisfy previously incurred withholding tax obligations and uses subsequent funds for purposes other than the payment of the overdue taxes is not liable for the penalty imposed by section 6672. (Secs. 6672, 7501; '54 Code.)

Slodov, 436 U.S. 238, Ct. D. 1993, 1978–2 C.B. 327.

102.20 Failure to withhold or deposit taxes. Examples illustrate the application of the penalty for failure to deposit employer and employee FICA and income taxes in situations where an employer (1) did not withhold or make deposits, (2) made timely deposits of taxes withheld on only a portion of the remuneration paid, and (3) withheld taxes but either did not deposit or was late in depositing. §§31.6302(c)–1, 301.6651–1, 301.6652–1, 301.6653–1, 301.6656–1, 301.6672–1. (Secs. 6302, 6651, 6652, 6653, 6656, 6672; '54 Code.)

Rev. Rul. 75–191, 1975–1 C.B. 376.

102.21 Fraud; assessment and collection after taxpayer's death. The 50 percent addition to tax for fraud as imposed by section 6653(b) of the Code that was not assessed during a taxpayer's life may be assessed and collected after his death. G.C.M. 22326 superseded. §§301.6653–1, 301.6659–1. (Secs. 6653, 6659; '54 Code.)

Rev. Rul. 73–293, 1973–2 C.B. 413.

102.22 Incomplete return; Employer's Quarterly Federal Tax Return. A Form 940 indicating that no tax is due which does not conform with the regulations under the FUTA is not a return. If subsequently tax is found to be due, the filing of such form would not start the running of the statute of limitations or preclude the assertion of a delinquency penalty or assessment of the tax at any time. §301.6501(c)–1. (Sec. 6501, '54 Code.)

Rev. Rul. 57–554, 1957–2 C.B. 854.

102.23 Stay of collection; failure to collect or pay. The bond and sureties requirements of reg. 301.7101–1 will apply to situations involving stay of collection of the 100 percent penalty assessment of section 6672. §§301.6672–1, 301.7101–1. (Secs. 6672, 7101; '54 Code.)

Rev. Rul. 79–170, 1979–1 C.B. 437.

102.24 Unagreed cases; Appeals Division; procedures. Updated procedures are set forth for appeals of 100-percent penalty assessments arising under section 6672. Rev. Procs. 61–27 and 69–26 superseded. Rev. Proc. 57–26 obsoleted. §301.6672–1. (Sec. 601.104, S.P.R.; Sec. 6672, '54 Code.)

Rev. Proc. 84–78, 1984–49 I.R.B. 6.

Period of limitation

(see: Limitation period)

Powers of attorney

(See: Attorneys and agents)

Practice before the Service

(See: Attorneys and agents)

Publicity of information

104.1 Disclosure authorization lists; business entities. Procedures are set forth by which business entities may submit letters authorizing the Service to disclose confidential tax information to certain employees listed in the authorization. §404.6103(c)–1. (Sec. 601.502, S.P.R.; Sec. 6103, '54 Code.)

Rev. Proc. 80–46, 1980–2 C.B. 779.

104.2 Inspection; general rules. Returns made in respect of the unemployment tax shall be open to inspection by certain classes of persons having a material interest which will be affected by information contained in such returns, and by certain classes of State and Federal Government establishments. Rules providing the procedure for such inspection and enumerating the class of persons and State and Federal Government establishments which have the privilege of inspection and the returns which they may inspect are set forth. §§301.6103(a)–1, 301.6103(d)–1. Amended by T.D. 6700. (Sec. 6103, '54 Code.)

T.D. 6543, 1961–1 C.B. 671; T.D. 6546, 1961–1 C.B. 682; E.O. 10906, 1961–1 C.B. 681.

104.3 Offers in compromise. The jurisdictional changes pertaining to the consideration and disposition of offers in compromise and general guidelines relating to the acceptability of an offer in compromise are set forth. Rev. Procs. 64–44 and 66–53 superseded. §301.7122–1. (Sec. 601.203, S.P.R.; Sec. 7122, '54 Code.)

Rev. Proc. 80–6, 1980–1 C.B. 586.

104.4 Returns and related documents. Returns and related documents made in respect to the unemployment tax shall be open to inspection, at the discretion of the District Director, to certain classes of persons having a material interest which will be affected by information contained in such returns. Rules providing the procedures to be followed in permitting inspection of returns and related documents and the increase in charges effective February 1, 1966, for furnishing copies and certification of such returns and documents, are set forth. Rev. Proc. 62–9 superseded. Modified by Rev. Proc. 84–71. Rev. Rul. 229 sets forth the procedures for the inspection of returns under the 1939 Code. §§301.6103(a)–1, 301.6103(a)–2. (Sec. 601.702, S.P.R.; Sec. 55, '39 Code; Sec. 6103, '54 Code.)

Rev. Rul. 229, 1953–2 C.B. 152; Rev. Proc. 66–3, 1966–1 C.B. 601.

104.5 Returns and related documents; charges. Fees the Service charges taxpayers for furnishing copies of returns and related documents have been changed. Rev. Proc. 66–..., as modified by Rev. Proc. 84–71, is further modified. (Sec. 601.702, S.P.R.)

Rev. Proc. 85–56, 1985–46 I.R.B. 45.

104.6 Returns and related documents; charges. Increased charges for copies of returns, related documents, and for verification of Forms 1040A or 1040EZ, are provided. Rev. Proc. 66–3 modified. §§301.6103(a)–1, 301.6103(a)–2. (Sec. 601.702, S.P.R.; Sec. 6103, '54 Code.)

Rev. Proc. 84–71, 1984–44 I.R.B. 15.

104.7 State governments. Procedures set forth relating to (1) the inspection by State governments of certain Federal tax returns and related documents, (2) the furnishing to State governments of copies, abstract data, or transcripts of such returns and documents, (3) the increase in charges, effective February 1, 1966, for copies of returns and each certification, and (4) penalty for unlawful disclosure of Federal income tax information by State employees. Rev. Proc. 62–18 superseded. Procedures for inspection by States of returns filed under the 1939 Code are set forth in Rev. Rul. 54–349 as modified by Rev. Proc. 58–15. §§301.6103(a)–1, 301.6103(b)–1, 301.6106–1. (Sec. 601.702, S.P.R.; Sec. 55, '39 Code; Secs. 6103, 6106, '54 Code.)

Rev. Proc. 66–4, 1966–1 C.B. 607.

104.8 Use in private litigation. Guidelines for persons requesting the production of records or the testimony of officers or employees of the Revenue Service in litigation in which the Federal Government is not a party. Rev. Proc. 66–43 superseded. §§301.6103(a)–2, 301.9000–1. (Secs. 6103, 7213, '54 Code.)

Rev. Proc. 73–6, 1973–1 C.B. 752.

Railroad retirement

106.1 Attorneys; engaged by railway company. An attorney performing services for a railway company that maintains control only on what shall be done and pays him a retainer fee is not an employee of that company for purposes of the RRTA but is engaged in a trade or business for self-employment tax purposes. C.T. 15 superseded. §§1.1402(c)–1, 31.3231(b)–1. (Secs. 1402, 3231, '54 Code.)

Rev. Rul. 69–98, 1969–1 C.B. 268.

106.2 Canadian compensation; conversion to U.S. dollars. An employer filing Form CT–1 and withholding income tax for railroad employees compensated in Canadian currency must convert the compensation to U.S. dollars by using the free rate of exchange noon buying rate for Canadian dollars in effect on the first business day of each payroll period as quoted by the Federal Reserve bank servicing the district in which the employer's headquarters is located. This rule is also applicable for purposes of income tax withholding. Mim. 6564 superseded. §§31.3202–1, 31.3402(a)–1. (Secs. 3202, 3402; '54 Code.)

Rev. Rul. 73–163, 1973–1 C.B. 417.

106.3 Canadian employees. Citizens or residents of Canada, who are not citizens or residents of the United States, who perform all of their services in Canada for a railroad company are not employees of the company for purposes of the RRTA. §31.3231(b)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 83–184, 1983–2 C.B. 173.

106.4 Carrier subsidiary performing cleaning services. The performance of a cleaning service by a wholly owned subsidiary of a railroad company in an office building containing a concourse leading to railroad facilities does not make the subsidiary an employer subject to the RRTA. §411.202. (Sec. 1532, '39 Code; Sec. 3231, '54 Code.)

Rev. Rul. 55–586, 1955–2 C.B. 451.

106.5 Claims for refund; absence of employer's statement. An employer's claim for refund of employee tax under the RRTA disallowed because the claim did not include the required employer's statement with respect to employee consent or repayment of the employee tax may be reconsidered provided the required statement is submitted within the 2-year period provided by section 3772(a) of the 1939 Code, even though the filing of new claims would be barred. §411.801. (Sec. 1502, '39 Code; Sec. 6413, '54 Code.)

Rev. Rul. 59–212, 1959–1 C.B. 692.

106.6 Claims for refund; reduced by amount of barred FICA tax deficiency. The Service may reduce the amount of a RRTA refund by the amount of a barred FICA tax deficiency on the same wages if a determination is made that an employer is a FICA employer rather than a RRTA employer. §§31.3503–1, 301.6402–1, 301.6511(b)–1. (Secs. 3503, 6402, 6511; '54 Code.)

Rev. Rul. 84–98, 1984–27 I.R.B. 14.

106.7 Compensation; Civil Rights Act violation payments. Payments made to employees of a railroad employer resulting from suit for violation of Title VII of the Civil Rights Act of 19... are compensation for Railroad Retirement Tax Act purposes. Rev. Rul. 72–341 amplified. §31.3231(e)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 84–92, 1984–1 C.B. 204.

106.8 Compensation; disability payments; employment terminated. Payments by a railroad to a disabled former employee under an agreement acknowledging the termination of employment and releasing the railroad from liability for personal injury are not taxable compensation under the RRTA. C.T. 4 superseded. §31.3231(e)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 68–416, 1968–2 C.B. 473.

106.9 Compensation; dues and insurance premiums waived. Amounts of dues and insurance premiums paid to a railway labor organization in the form of services performed for it by an employee representative or the dues and premiums waived by the organization, in consideration of services performed as an employee, are compensation within the meaning of the RRTA. S.S.T. 9 and Mim. 4949 superseded. §31.3231(e)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 70–194, 1970–1 C.B. 211.

106.10 Compensation; employee's tax paid by employer without deduction from employee's wages. Guidelines are set forth for determining the amount of RRTA compensation and income tax withholding wages, when an employer, under an arrangement with an employee, pays the employee tax imposed by section 32... for services rendered after September 30, 19... without deducting the amount of the tax from the employee's cash remuneration. §§31.3201–1, 31.3231(e)–1, 31.3401(a)–1. (Sec. 601.40... S.P.R.; Secs. 3201, 3231, 3401, '54 Code.)

Rev. Proc. 83–43, 1983–1 C.B. 778.

106.11 Compensation; housing accommodations. The value of housing accommodation... furnished railroad section foremen as a part... their total remuneration, which value is fixed... agreement between the railroad and the foreme... is taxable compensation for purposes of t... RRTA; however, if the employment agreeme... does not provide, either expressly or impliedly, f... the inclusion of a fixed value for housing acco... modations as part of the employee's remuner... tion, such value is not compensation. C.T. 17 s... perseded. §31.3231(e)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 69–391, 1969–2 C.B. 191.

106.12 Compensation; lanterns and hand tools cost. Amounts deducted from railroad em... ployees remuneration to pay for lanterns a... hand tools used in their work are not compens... tion for purposes of the RRTA. C.T. 14 superse... ed. §31.3231(e)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 69–317, 1969–1 C.B. 269.

106.13 Compensation; lump-sum back pay; employee election with respect to rate and monthly compensation limitations. T... employee election under section 3231(e)(2), r... lating to lump-sum back pay, has been repeal... with respect to remuneration paid after Decemb... 31, 1984. §301.7805–1. (Sec. 7805, '54 Code.)

Rev. Rul. 84–112, 1984–30 I.R.B. 10.

106.14 Compensation; lump-sum separation allowances. Certain lump-sum separati... and severance allowances paid to laid-off emplo... ees in the railroad industry are held to be compe... sation subject to the taxes imposed under t... RRTA and wages subject to income tax withhol...

ing. §§31.3231(e)–1, 31.3401(a)–1. (Secs. 3231, 3401; '54 Code.)
Rev. Rul. 65–251, 1965–2 C.B. 395.

106.15 Compensation; meal and lodging allowances. Fully accounted for allowances for travel expenses a railroad pays to an employee, whose round trip service is of a duration and nature requiring release from duty to obtain substantial sleep or rest, are neither compensation for RRTA purposes nor wages for income tax withholding; but, if not accounted for, they are compensation for RRTA purposes. However, allowances, if paid for shorter trips not requiring sleep or rest, for which no expense is incurred and no accounting made are compensation for RRTA purposes and subject to income tax withholding. §§31.3231(e)–1, 31.3401(a)–1. (Secs. 3231, 3401; '54 Code.)
Rev. Rul. 75–279, 1975–2 C.B. 409.

106.16 Compensation; settlement; violation of reemployment rights. An amount received in settlement of a judgement for violation of an employee's reemployment rights after military service is compensation subject to the RRTA to the extent and at the rate of tax applicable at the time it is received unless the employee elects, under section 3231(e)(2), to have the amounts deemed paid in the months to which they are attributable. §31.3231(e)–1. (Sec. 3231, '54 Code.)
Rev. Rul. 77–100, 1977–1 C.B. 309.

106.17 Compensation; settlement for injuries; credit to time lost. An amount received by a railroad employee, under a settlement agreement for personal injuries sustained in his employment, is not includible in gross income even though he elects to apportion part of such amount to time lost for the purpose of computing railroad retirement credit. §31.3231(e)–1. (Sec. 3231, '54 Code.)
Rev. Rul. 61–1, 1961–1 C.B. 14.

106.18 Compensation; sick benefits paid from fund supported by employee contributions. Sick benefits paid to employees of a railroad company from a fund wholly supported by employee contributions are not taxable compensation. C.T. 5 superseded. §31.3231(e)–1. (Sec. 3231, '54 Code.)
Rev. Rul. 68–568, 1968–2 C.B. 475.

106.19 Compensation; sick leave. Payments made under a sick pay plan by a railroad company to employees who are absent from work for routine medical or dental examinations or due to death of a relative are compensation for purposes of section 3231(e)(1) of the RRTA; payments made to employees who are absent from work due to illness or injury are not compensation. §31.3231(e)–1. (Sec. 3231, '54 Code.)
Rev. Rul. 78–224, 1978–1 C.B. 309.

106.20 Compensation; sick pay; pregnancy and childbirth. Payments made under a sick pay plan to employees who are absent from work because of pregnancy and childbirth are not "wages" for RRTA purposes. Modified by Rev. Rul. 82–190. §31.3231(e)–1. (Sec. 3231, '54 Code.)
Rev. Rul. 81–265, 1981–2 C.B. 195.

106.21 Compensation; sick pay; pregnancy and childbirth. Payments made under a sick pay plan during the first 6 months of an absence due to pregnancy are wages and compensation for purposes of FICA and RRTA when made on or after January 1, 1982. Rev. Ruls. 81–129 and 81–265 modified. §§31.3121(a)(2)–1, 31.3231(e)–1. (Secs. 3121, 3231; '54 Code.)
Rev. Rul. 82–190, 1982–2 C.B. 222.

106.22 Compensation; State youth opportunity program payment. Summer employees of a railroad company under a State youth opportunity program who as a condition of their employment are required to consent that a portion of their remuneration be withheld and paid to the State are not required to include these amounts withheld in their gross income. Such amounts are not wages for purposes of income tax withholding or compensation for purposes of the RRTA. §§31.3231(e)–1, 31.3401(a)–1. (Secs. 61, 3231, 3401; '54 Code.)
Rev. Rul. 74–50, 1974–1 C.B. 22.

106.23 Computation of tax; Form CT–1. Instructions are provided for the computation of employer and employee taxes to be reported on Form CT–1 with respect to compensation paid during 1984 for services rendered after 1969 and before 1984, upon a request by an employee, as provided by section 3231(e)(2). Rev. Proc. 83–84 superseded. §§31.3201–1, 31.3221–1. (Sec. 601.602, S.P.R.; Secs. 3201, 3221, 3231, '54 Code.)
Rev. Proc. 84–64, 1984–43 I.R.B. 24.

106.24 Computation of tax; Forms CT–1 and CT–2. Instructions are provided for the computation of the taxes to be reported on Forms CT–1 and CT–2 with respect to compensation paid during (Col.1) for services rendered during the years (Col. 2) by Rev. Proc. (Col. 3). For the tax year 1976, see sections 201—207 of Pub.L. 94–93. §§31.3201–1, 31.3211–1, 31.3221–1. (Sec. 601.602, S.P.R.; Secs. 3201, 3211, 3221, '54 Code.)

1965—1937–1961—64–45, 1964–2 C.B. 979
1966—1937–9/30/65—66–8, 1966–1 C.B. 618
1967—1937–9/30/66—67–7, 1967–1 C.B. 578
1968—1937–1966—68–2, 1968–1 C.B. 742
1969—1937–1967—69–7, 1969–1 C.B. 398
1970—1937–1968—70–1, 1970–1 C.B. 414
1971—1937–1969—71–3, 1971–1 C.B. 659
1972—1968–1970—72–14, 1972–1 C.B. 735
1973—1968–1971—73–1, 1973–1 C.B. 745
1974—1969–1972—74–13, 1974–1 C.B. 435
1975—1970–1973—75–9, 1975–1 C.B. 649

106.25 Consolidated returns. Conditions are prescribed under which two or more employers may file consolidated returns of the taxes imposed by the Railroad Retirement Tax Act. §§31.3221–1, 31.6011(a)–7, 31.6302(c)–2. (Sec. 601.602, S.P.R.; Secs. 3221, 6011, 6302, '54 Code.)
Rev. Proc. 73–32, 1973–2 C.B. 487.

106.26 Contract services. Individuals rendering personal service on property used in the railroad's operations, who are hired, fired, supervised, and compensated by an independent contractor, who has contracted to perform the work for the railroad, are not in the service of the railroad and are not employees of the railroad for purposes of the RRTA. §411.203. (Sec. 1532, '39 Code; Sec. 3231, '54 Code.)
Chicago, St. Paul, Minneapolis and Omaha Railway Co., 206 F. 2d 831, Ct. D. 1767, 1954–1 C.B. 217.

106.27 Deposits; wire transfer. Instructions are provided to railroad employers on wire transferring Railroad Retirement Tax Deposits in accordarce with the Railroad Retirement Solvency Act of 1983. §31.6302(c)–1. (Sec. 601.602, S.P.R.; Sec. 6302, '54 Code.)
Rev. Proc. 83–90, 1983–2 C.B. 615.

106.28 Employee; freight car repairman. A freight car repairman employed by a steel company and its subsidiary railroad company is an employee of the railroad company with respect to services performed for the railroad company for RRTA purposes; he is an employee of the steel company with respect to services performed for that company for purposes of employment taxes. C.T. 10 superseded. §§31.3121(b)(9)–1, 31.3[illegible].(o)–1. (Secs. 3121, 3231; '54 Code.)
Rev. Rul. 68–567, 1968–2 C.B. 472.

106.29 Employee; independent contractor; car cleaner. An independent cleaning and general maintenance contractor, who is engaged to clean rail cars at a small outlying company-owned yard by a railroad company that uses its regular employees to clean cars at larger yards, is an employee of the company for RRTA purposes, but not for income tax withholding purposes. §§31.3231(b)–1, 31.3401(c)–1. (Secs. 3231, 3401; '54 Code.)
Rev. Rul. 74–355, 1974–2 C.B. 339.

106.30 Employee; part-time services. A U.S. citizen, principally engaged in the operation of his own grocery store, who furnishes his own equipment and receives a monthly salary for performing services at the Canadian border for a short time each day for a railway company, an employer as defined by the RRTA, in tasks related to U.S. Customs inspection of freight cars that are normally performed by the railway company's regular employees at other border checkpoints, is an employee of the railway company for purposes of the RRTA and income tax withholding. §§31.3231(b)–1, 31.3401(c)–1. (Secs. 3231, 3401; '54 Code.)
Rev. Rul. 74–494, 1974–2 C.B. 340.

106.31 Employee; station caretaker-cleaner in Canada. A citizen and resident of the U.S. performing services as a caretaker-cleaner of a railroad station in Canada, operated jointly by the Canadian National Railway and a U.S. company that conducts the principal part of its business in the U.S. and that pays the caretaker's salary, furnishes his supplies and equipment, supervises his work, and may terminate his services at any time, is an employee of the U.S. company for purposes of the RRTA and income tax withholding. §§31.3231(b)–1, 31.3401(c)–1. (Secs. 3231, 3401; '54 Code.)
Rev. Rul. 74–438, 1974–2 C.B. 339.

106.32 Employee operating connecting railway. A railroad company is the employer of certain individuals who are engaged by it but who perform services in the operation of a connecting railway. C.T. 1 superseded. §31.3231(b)–1. (Sec. 3231, '54 Code.)
Rev. Rul. 68–399, 1968–2 C.B. 469.

106.33 Employer; association of railway employees. An association of railroad employees formed to standardize certain procedures for the railroad industry and sponsored primarily by carriers is an employer under the RRTA. §411.202. (Sec. 1532, '39 Code; Sec. 3231, '54 Code.)
Rev. Rul. 56–27, 1956–1 C.B. 487.

106.34 Employer; beginning of tax liability. A company becomes an employer subject to the RRTA taxes on the date the company first hires employees to perform functions directly related to its carrier operations and not on the effective date of the ICC's approval of the company's railroad operations. §31.3231(a)–1. (Sec. 3231, '54 Code.)
Rev. Rul. 82–100, 1982–1 C.B. 155.

106.35 Employer; casual service. Insubstantial railroad related services performed by a company that is wholly owned by a railroad fall within the "casual service" exception contained in section 3231(a), even though they are regularly carried on. §31.3231(a)–1. (Sec. 3231, '54 Code.)
Rev. Rul. 84–91, 1984–1 C.B. 203.

106.36 Employer; cessation of tax liability. A railroad ceases to be an employer subject to the RRTA taxes when the railroad's employees stop performing services in connection with the railroad's carrier activities and not on the effective date of the ICC's approval of the railroad's aban-

donment of its operations. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 82–99, 1982–1 C.B. 154.

106.37 Employer; computer service company owned by railroad. A railroad's wholly owned computer service company, 30 percent of whose staff of programmers are involved in providing services under a contract with the railroad and the remaining 70 percent in providing services under a contract to another company with non-rail commercial clients, is an employer with respect to those programmers servicing its contract with its parent railroad. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 77–445, 1977–2 C.B. 357.

106.38 Employer; docking facility operated for carrier. A company that operates a docking facility under contract with a railroad carrier, but is not directly or indirectly owned or controlled by the carrier, is not an employer. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 82–64, 1982–1 C.B. 154.

106.39 Employer; hospital association; controlled by carrier. A hospital association, controlled by a carrier, that provides hospitalization and treatment of railway employees is an employer. C.T. 16 superseded. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 69–366, 1969–1 C.B. 267.

106.40 Employer; icing company; common control with railroad company. An icing company, owned by the same interests that control a railroad company, performing other than casual services in connection with the refrigeration and icing of property transported by railroad, is an employer under the RRTA. C.T. 13 superseded. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 69–306, 1969–1 C.B. 267.

106.41 Employer; pier facilities operator owned by railroad. A company, wholly owned by a carrier railroad company, that operates pier facilities for loading or unloading of ships, trucks, and railcars, and derives more than fifty percent of its income from charges collected on freight transported to or from its facilities by rail, is performing other than casual services in connection with the transportation of property by railroad and is an employer. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 77–386, 1977–2 C.B. 356.

106.42 Employer; piggy-back service company owned by railroad. A wholly owned piggy-back service company that leases a fleet of trailers, containers, bogies, converter gears, and trailer chassis to its carrier railroad company parent, maintains and repairs the leased equipment, repairs similar equipment the parent owns or leases from others, deramps and ramps trailers from and to flatcars for the parent and others, and provides limited trucking service, is an employer under the RRTA. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 74–552, 1974–2 C.B. 338.

106.43 Employer; real estate company owned by railroad. In similar situations the Service, for purposes of the RRTA, will follow the decision in *Southern Development Co.* that a real estate company, wholly owned by a railroad, which leased space in one of its properties to its parent for the parent's ticket selling and general office operations, was an employer. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 74–121, 1974–1 C.B. 300.

106.44 Employer; relief from tax liability. An employer, under the RRTA, may not be relieved of its liability for tax by reason of (1) the inconsequential amount of the taxes payable, (2) the fact that its carrier services are insignificant in relation to its total services, or (3) the preference of any of the parties in interest, including the employees concerned. (Sec. 3231, '54 Code.)

Rev. Rul. 56–464, 1956–2 C.B. 720.

106.45 Employer; subsidiary performing service for parent. In situations similar to that in *Railroad Concrete Crosstie Corp. V. Railroad Retirement Board,* 709 F. 2d 1404 (11th Cir. 1983), in which a wholly owned subsidiary manufactures an item that is integral to the railroad operations of an employer affiliate and provides substantially all of its output to the employer affiliate, the taxes imposed by the Railroad Retirement Tax Act are applicable. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 85–177, 1985–43 I.R.B. 11.

106.46 National railway labor organization. An individual performing services for a local lodge or State legislative committee of a national railway organization is, with respect to services he performs for the State legislative committee, an employee for purposes of the RRTA, but he is not an employee with respect to services performed for the local lodge. However, those services for the lodge are not excepted from employment by the FICA. C.T. 8 and C.T. 9 superseded. §§31.3121(b)(9)–1, 31.3231(b)–1. (Secs. 3121, 3231; '54 Code.)

Rev. Rul. 68–542, 1968–2 C.B. 470; Rev. Rul. 68–543, 1968–2 C.B. 471.

106.47 Payment for lost time. Payment made to an employee by a railroad company for lost time following his dismissal without cause is includible in the employee's gross income in the taxable year received and is wages subject to withholding of income tax. Further, the amount paid is compensation subject to taxes imposed by the RRTA. O.D. 512 superseded. §31.3231(e)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3231, 3401, 3402; '54 Code.)

Rev. Rul. 70–404, 1970–2 C.B. 5.

106.48 Physicians; engaged by railway company. Physicians serving as local surgeons for a railway company that pays them retainer fees but neither exercises nor has the right to exercise control over their activities are not employees of that company for purposes of the RRTA. They are engaged in a trade or business and the income derived therefrom should be considered in computing net earnings from self-employment. C.T. 18 superseded. §§1.1402(c)–1, 31.3231(b)–1. (Secs. 1402, 3231; '54 Code.)

Rev. Rul. 69–390, 1969–2 C.B. 190.

106.49 Railway; owned and operated by political subdivision of a State. A railway company, a carrier subject to Part I of the Interstate Commerce Act, and its employees are not exempt from the taxes imposed by the RRTA, even though the company is owned and operated by the city, a political subdivision of the State. C.T. 7 superseded. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 70–311, 1970–1 C.B. 210.

106.50 Rate determination; quarterly. The Railroad Retirement Board has determined the rate of tax under section 3221 of the Code for the quarters beginning on the dates indicated:

April 1, 1985, twenty cents, 1985–1 C.B. 333;
July 1, 1985, twenty cents, 1985–1 C.B. 333;
October 1, 1986, twenty two and one-half cents, unpublished;
January 1, 1987, twenty four cents, 1986–46 I.R.B. 13.
April 1, 1970, six cents, 1970–1 C.B. 210;
July 1, 1970, seven cents, 1970–1 C.B. 210;
October 1, 1970, seven cents, 1970–2 C.B. 232;
January 1, 1971, six cents, 1971–1 C.B. 289;
April 1, 1971, six cents, 1971–1 C.B. 290;
July 1, 1971, six cents, 1971–1 C.B. 290;
October 1, 1971, six cents, 1971–2 C.B. 352;
January 1, 1972, six cents, 1971–2 C.B. 353;
April 1, 1972, six cents, 1972–1 C.B. 326;
July 1, 1972, seven and one-half cents, 1972–1 C.B. 326;
October 1, 1972, seven and one-half cents, 1972–2 C.B. 541;
January 1, 1973, seven and one-half cents, 1972–2 C.B. 541;
April 1, 1973, seven and one-half cents, 1973–1 C.B. 417;
July 1, 1973, seven and one-half cents, 1973–2 C.B. 339;
October 1, 1973, seven and one-half cents, 1973–2 C.B. 339;
January 1, 1974, seven and one-half cents, 1973–2 C.B. 339;
April 1, 1974, seven and one-half cents, 1974–1 C.B. 299;
July 1, 1974, seven and one-half cents, 1974–1 C.B. 299;
October 1, 1974, seven and one-half cents, 1974–2 C.B. 338;
January 1, 1975, eight and one-half cents, 1974–2 C.B. 338;
April 1, 1975, eight and one-half cents, 1975–1 C.B. 324;
July 1, 1975, eight and one-half cents, 1975–1 C.B. 325;
October 1, 1975, eight and one-half cents, 1975–2 C.B. 407;
January 1, 1976, twelve cents, 1975–2 C.B. 407;
April 1, 1976, twelve cents, 1976–1 C.B. 326;
July 1, 1976, twelve cents, 1976–1 C.B. 326;
October 1, 1976, twelve cents, 1976–2 C.B. 310;
January 1, 1977, twelve and one-half cents, 1976–2 C.B. 311;
April 1, 1977, twelve and one-half cents, 1977–1 C.B. 308;
July 1, 1977, twelve and one-half cents, 1977–1 C.B. 309;
October 1, 1977, twelve and one-half cents, 1977–2 C.B. 355;
January 1, 1978, twelve cents, 1977–2 C.B. 356;
April 1, 1978, twelve cents, 1978–1 C.B. 308;
July 1, 1978, twelve cents, 1978–1 C.B. 309;
October 1, 1978, twelve cents, 1978–2 C.B. 254;
January 1, 1979, twelve and one-half cents, 1978–2 C.B. 254;
April 1, 1979, twelve and one-half cents, 1979–1 C.B. 319;
July 1, 1979, twelve and one-half cents, 1979–1 C.B. 319;
October 1, 1979, twelve and one-half cents, 1979–2 C.B. 359;
January 1, 1980, twelve and one-half cents, 1979–2 C.B. 360;
April 1, 1980, twelve and one-half cents, 1980–1 C.B. 220;
July 1, 1980, twelve and one-half cents, 1980–1 C.B. 220;
October 1, 1980, twelve and one-half cents, 1980–2 C.B. 296;
January 1, 1981, fourteen and one-half cents, 1980–2 C.B. 297;
April 1, 1981, fourteen and one-half cents, 1981–1 C.B. 482;
July 1, 1981, fouuteen and one-half cents, 1981–1 C.B. 483;
October 1, 1981, fourteen and one-half cents, 1981–2 C.B. 198;
January 1, 1982, seventeen cents, 1981–2 C.B. 198;
April 1, 1982, seventeen cents, 1982–1 C.B. 153;
July 1, 1982, seventeen cents, 1982–1 C.B. 153;
October 1, 1982, seventeen and one-half cents, 1982–2 C.B. 229;
January 1, 1983, eighteen and one-half cents, 1982–2 C.B. 230;

April 1, 1983, eighteen and one-half cents, unpublished;
July 1, 1983, eighteen and one-half cents, 1983–1 C.B. 237;
October 1, 1983, eighteen and one-half cents, 1983–2 C.B. 173;
January 1, 1984, twenty cents, 1983–2 C.B. 173;
April 1, 1984, twenty cents, unpublished;
July 1, 1984, twenty cents, 1984–27 I.R.B. 14;
October 1, 1984, twenty cents, unpublished;
January 1, 1985, twenty cents, unpublished.
April 1, 1985, twenty cents, 1985–1 C.B. 333;
July 1, 1985, twenty cents, 1985–1 C.B. 333;
October 1, 1986, twenty two and one-half cents, unpublished;
January 1, 1987, twenty four cents, 1986–46 I.R.B. 13.

106.51 Seniority rights relinquished; lump-sum payment. A lump-sum payment received by a railroad employee as consideration for relinquishing employment seniority rights constitutes compensation for purposes of the RRTA, is wages for purposes of income tax withholding, and is ordinary income in the taxable year of receipt. Rev. Rul. 58–301 distinguished. Rev. Rul. 59–227, which held in part that such rights did not constitute compensation for RRTA purposes and were not wages for purposes of income tax withholding, is modified, and, effective February 18, 1975, is superseded. §§31.3231(e)–1, 31.3401(a)–1, 301.7805–1. (Secs. 61, 1221, 1222, 3231, 3401, 7805; '54 Code.)

Rev. Rul. 75–44, 1975–1 C.B. 15.

106.52 Sick pay. A series of questions and answers explain the changes made by Pub. L. 97–123 regarding taxability of sick pay under the Federal Insurance Contributions Act and the Railroad Retirement Tax Act. §§31.3121(a)(2)–1, 31.3231(e)–1. (Sec. 601.401, S.P.R.; Secs. 3121, 3231, '54 Code.)

Rev. Proc. 82–20, 1982–1 C.B. 466.

106.53 Tax Deposit requirements. The deposit of the taxes under the RRTA on compensation paid in October for services rendered in September, the last month in a quarterly return period, is due by October 31. §31.6302(c)–2. (Sec. 6302, '54 Code.)

Rev. Rul. 78–169, 1978–1 C.B. 432.

106.54 Transportation company owned by railroad. A transportation company, wholly owned by a railroad, operating a substantial bus service between various terminals for railroad passengers in addition to trucking freight consigned to the railroad is an employer under the RRTA. C.T. 12 superseded. §31.3231(a)–1. (Sec. 3231, '54 Code.)

Rev. Rul. 69–42, 1969–1 C.B. 266.

Rates of tax

108.1 FICA; 1937—1961; rates and wage limitation. The rates of employer and employee tax and the wage limitation under the FICA are listed for the years 1937 through 1961.

Announcement, 1961–1 C.B. 863.

108.2 Social Security contribution and benefit base. The Secretary of Health, Education, and Welfare Secretary of Health and Human Services has announced the contribution and benefit base for remuneration paid in and for the taxable years as indicated:

1977, $16,500, 1976–2 C.B. 673;
1978, $17,700, 1977–2 C.B. 580;
1979, $22,900, 1978–2 C.B. 542;
1980, $25,900, 1979–2 C.B. 601;
1981, $29,700, 1980–2 C.B. 857;
1983, $35,700, 1982–2 C.B. 866;
1984, $37,800, 1983–2 C.B 618;
1985, $39,600, 1984–53 I.R.B. 23;
1986, $43,800, 1986–49 I.R.B. 23.

108.3 Social Security contribution and benefit base; pre-1977 law. The Secretary of Health, Education, and Welfare has announced that the contribution and benefit base for 1980 that would have been in effect under pre-1977 law is $20,400. This "old-law" base is used for certain RRTA and ERISA purposes and for computing special minimum benefits for workers with many years of low earnings.

1980–1 C.B. 699.

Receipts

110.1 Compensation paid; Form W–2. Only one Form W–2 must be furnished to the employee for a calendar year where (1) the employee worked in different branch offices of the same corporation and each branch office maintains its own payroll office from which payment is made; (2) the employer paid a bonus and the payment is separate from the regular salary payment; or (3) payments are in the form of life insurance purchased by the employer which are includible in the employee's gross income under section 79(a) of the Code. Pending further study, this ruling will not be applied to employers with multi-state and multi-division operations resulting in decentralized accounting and payroll systems who, in prior years, have furnished more than one Form W–2 and employers who maintained separate payrolls and issued separate Forms W–2 for irregular types of compensation, i.e., executive bonuses and group term life insurance payments. §§31.6051–1, 301.7805–1. (Sec. 6051, 7805; '54 Code.)

Rev. Rul. 70–158, 1970–1 C.B. 267; Rev. Rul. 70–579, 1970–2 C.B. 288.

110.2 Employee annuity payment; exempt organization; Form W–2. Amounts reportable as wages on Form W–2 for income tax withholding purposes by a section 501(c)(3) organization that purchases an annuity, including life insurance protection, for an employee pursuant to a salary reduction agreement must include that portion of the annuity payment attributable to the purchase of current life insurance and any amount in excess of the employee's exclusion allowance. However, for FICA tax purposes the entire amount must be reported, subject to the annual wage limitation. §31.6051–1 (Sec. 6051, '54 Code.)

Rev. Rul. 70–453, 1970–2 C.B. 287.

110.3 Exercise of employee stock option; Form W–2. Income realized by employees and former employees from a disqualifying disposition of stock acquired by the exercise of a qualified stock option descibed in section 422(b) of the Code is not wages; however, the employer may be required to report such income of the optionees who are employees for all or part of the year of dispostition as "other compensation" on Form W–2. Income of an optionee who is not an employee in the year of disposition may be required to be reported on Form 1099. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–52, 1971–1 C.B. 278.

110.4 Federal employee; erroneous salary payments; Form W–2. Erroneous salary payments to Federal employees, the collection of which is waived by law, must be reflected in the employees' Form W-2 for the year such erroneous payment is made to the extent there has been no repayment of such amount by the employees within that year. Further, where such amount has been repaid and later refunded to the employees, it is not again subject to withholding of income tax. This will not be applied to require any employer agency to correct a Form W–2 for any year prior to 1969 under certain conditions. §§31.3402(a)–1, 31.6011(a)–4, 31.6051–1, 301.7805–1 (Secs. 3402, 6011, 6051, 7805; '54 Code.)

Rev. Rul. 70–177, 1970–1 C.B. 214.

110.5 Federal employee; repayment of annual leave on reemployment. The gross income, reported by a Federal employee who received a lump-sum annual leave payment from one agency and repaid a portion of it when reemployeed by another agency in the same taxable year, may be adjusted to reflect the repayment and a copy of the agency receipt for the repayment should be attached to reconcile the amounts subject to withholding shown on the Forms W–2. I.T. 3969 superseded. §§31.3401(a)–1, 31.6051–1. (Secs. 61, 451, 3401, 6051; '54 Code.)

Rev. Rul. 75–531, 1975–2 C.B. 31.

110.6 Noncash remuneration paid to salesmen; Form W–2. Employers are not required to deduct or withhold income tax after August 9, 1955, from noncash remuneration paid to retail commission salesmen; however, the fair market value of such remuneration must be included in the total wages reported on the Withholding Tax Statement, For W–2. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul 57–18, 1957–1 C.B. 354.

110.7 Reasonable effort to deliver statement; Form W–2. An employer who is required to furnish a Form W–2 to an employee must make a reasonable effort to effect a timely delivery; merely having it available at his place of business is not sufficient; however, mailing the statement to the employee's last known address is sufficient. §406.501. (Sec. 1633, '39 Code; Sec. 6051, '54 Code.)

Rev. Rul. 55–145, 1955–1 C.B 503.

110.8 Sick pay. Conditions are given under which an employer may show separately on Form W-2 excludable sick pay paid after 1974. Employees must submit a statement showing the computation of excludable sick pay on their individual income tax returns. Rev. Procs. 56–17 superseded and 73–19 obsoleted. §31.3401(a)–1. (Sec. 601.401, S.P.R.; Secs. 105, 3401; '54 Code.)

Rev. Proc. 75–7, 1975–1 C.B. 648.

110.9 Tips; rate reduction. Guidance is provided for employers that want to apply to the district director to have the tip rate of a large food and beverage establishment reduced from 8 percent to a figure not less than 2 percent. §31.6053–3. (Sec. 601.401, S.P.R.; Sec. 6053, '54 Code.)

Rev. Proc. 85–10, 1985–1 C.B. 499.

110.10 Tips; rate reduction. Guidance is provided to both employers and employees of certain large food and beverage establishments who want to petition the district director for a reduction in the tip rate allocation figure from 8 percent of gross receipts to a figure not below 2 percent. Rev. Proc. 85–4, as modified by Rev. Proc. 85–10, is amplified and superseded. §31.6053–3. (Sec. 601.401, S.P.R.; Sec. 6053, '54 Code.)

Rev. Proc. 86–21, 1986–17 I.R.B. 29.

110.11 Unemployment benefit trust; repayments by employees; withholding. Form W–2 should not reflect either the wages or income tax withheld of employees who received benefit payments under a supplemental unemployment benefit plan and later repaid to the trust the amounts received within the same taxable year prior to the time their Forms W–2 were issued and after adjustments to the withholding were made pursuant to section 6413 of the Code. How-

ever, if such repayments are made after the Forms W-2 were issued, but within the same calendar year, the trust should furnish Corrected Forms W-2. §§31.6051-1, 31.6413(a)-1. (Secs. 6051, 6413; '54 Code.)

Rev. Rul. 78-198, 1978-1 C.B. 433.

Records
(See: Books and records)

Refunds and credits
(See also: Limitation period)

112.1 Adjusted interest rate. The interest rate to be charged on underpayments or paid on overpayments after January 1976 will be determined not later than October 15, 1975, based on the adjusted prime rate charged by commercial banks during September 1975. (Sec. 6621, '54 Code.)

Rev. Rul. 75-165, 1975-1 C.B. 375.

112.2 Armed Forces; combat death. The cancellation of tax liability of a serviceman killed in action while serving in a combat zone does not eliminate the income on which such liability was based. A refund of self-employment tax does not change the amount of self-employment income previously reported and does not necessitate a correction of records previously forwarded to the Social Security Administration. §§29.154-1, 29.482-1. (Secs. 154, 482, '39 Code; Sec. 1402, '54 Code.)

Rev. Rul 55, 1953-1 C.B. 259.

112.3 Bankruptcy estate. A procedure is provided for the trustee (or debtor in possession) representing the bankruptcy estate to file a claim for credit or refund for any overpayment of tax. §301.6402-2. (Sec. 601.105, S.P.R.; Sec. 6402, '54 Code.)

Rev. Proc. 81-18, 1981-1 C.B. 688.

112.4 Claims; fictitious employees; embezzlement scheme. An employer is entitled to a refund of purported FICA, FUTA, and withheld income taxes paid on funds embezzled from an employer by the addition of fictitious employees to its payroll. §§31.6414-1, 301.6401-1, 301.6402-2, 301.6511(a)-1, 301.6513-1. (Secs. 6401, 6402. 6414, 6511, 6513; '54 Code.)

Rev. Rul. 77-464, 1977-2 C.B. 474.

112.5 Claims; limitation period; FICA overpayment; employee meals. An employer's timely filed protective claim for refund of FICA tax will also protect its employees' individual claims filed after the period of limitations has expired. §301.6402-2. (Sec. 6402, '54 Code.)

Rev. Rul. 83-79, 1983-1 C.B. 345.

112.6 Claims; overpayment of self-employment tax. Form OAR-7000, Notice of Determination of Self-Employment Income, furnished by the Social Security Administration, is not considered a claim for refund of overpaid self-employment tax. A taxpayer should file a claim on Form 843 before the expiration of the statutory period of limitation. §301.6402-2. (Sec. 6402, '54 Code.)

Rev. Rul. 56-297, 1956-1 C.B. 564.

112.7 Claims; overpayment of withholding tax. A refund claimed on a third quarter Form 941, resulting from income tax overwithheld in the first quarter and repaid to the employee in the third quarter, accrues interest from the due date of the third quarter return even though that return was filed late. §§31.6413(a)-2, 301.6513-1, 301.6611-1. (Secs. 6413, 6513, 6611; '54 Code.)

Rev. Rul. 75-315, 1975-2 C.B. 482.

112.8 Claims; railroad retirement tax; employer's statement. An employer's claim for refund of employee tax under the RRTA disallowed because the claim did not include the required employer's statement with respect to employee consent or repayment of the employee tax, may be reconsidered provided the required statement is submitted within the 2-year period provided by section 3772(a) of the 1939 Code, even though the filing of new claims would be barred. §411.801. (Sec. 1502, '39 Code; Sec. 6413, '54 Code.)

Rev. Rul. 59-212, 1959-1 C.B. 692.

112.9 Claims; timeliness. Where the last day of the limitation period for filing a claim for credit or refund falls on a Saturday, Sunday, or legal holiday and the claim is filed on the next succeeding day which is not a Saturday, Sunday, or legal holiday, the amount of refund allowable is not limited even though no tax was paid within the three-year period immediately preceding the date of actual filing of the claim. Rev. Rul. 57-354, which deals with the timeliness of claims for credit or refund under the 1939 and 1954 Codes in cases where no return was filed or where the return filed was delinquent, is superseded with respect to its application of the 1954 Code. §§39.322-7, 301.6511(a)-1, 301.6511(b)-1, 301.7503-1. (Sec. 322, '39 Code; Secs. 6511, 7503, '54 Code.)

Rev. Rul. 57-354, 1957-2 C.B. 913; Rev. Rul. 66-118, 1966-1 C.B. 290.

112.10 Claims; timeliness; assessment after limitation period expires. The Service is barred from assessing the payment of an agreed deficiency plus interest after the running of the period of limitation of assessment. However, the advance payment of the deficiency plus interest does not constitute an overpayment of tax so as to entitle the taxpayer to a refund. Rev. Rul. 74-580 distinguished. §§301.6401, 301.6402, 301.6501(a)-1. (Secs. 6401, 6402, 6501; '54 Code.)

Rev. Rul. 85-67, 1985-1 C.B. 364.

112.11 Claims; timeliness; assessment and payment after limitation period expires. A claim for refund of a tax assessed and paid after the expiration of the period of limitations on assessment must be filed within two years of the date of payment. The decision in *Thompson* will no longer be followed. §§301.6401-1, 301.6402-2, 301.6501(a)-1, 301.6511(a)-1. (Secs. 6401, 6402, 6501, 6511; '54 Code.)

Rev. Rul. 74-580, 1974-2 C.B. 400.

112.12 Discharge or resignation of employee. Liability properly incurred for FICA taxes is not affected, nor does the right to refund or credit accrue to the company or employee, by reason of the employee's subsequent discharge or resignation. S.S.T. 162 superseded. §§31.3101-1, 31.3111-1, 31.6402(a)-2. (Secs. 3101, 3111, 6402; '54 Code.)

Rev. Rul. 68-492, 1968-2 C.B. 417.

112.13 Employer tax; annual wage limitation. An employer may not, in determining the first $4,200 of wages paid to an employee under the FICA, take into consideration wages paid to such employee by another employer (other than a predecessor employer) in the same year; neither may he obtain a refund of employer tax paid on such wages by him. Modified by Rev. Rul. 57-32 with respect to the merger or consolidation of two corporations. (Sec. 3121, '54 Code.)

Rev. Rul. 55-584, 1955-2 C.B. 394.

112.14 Employer tax; annual wage limitation. In determining the first $4,200 of wages paid to an employee, no consideration may be given to wages paid to the employee by another employer, except in the case of wages paid by a successor employer subsequent to a merger or consolidation. Neither of two corporations which merged during the taxable year is entitled to a refund of any portion of the employer tax paid on the first $4,200 of wages paid by each of them to the same employee prior to the merger. Rev. Rul. 55-584 modifed. §31.3121(a)-1. (Sec. 3121, '54 Code.)

Rev. Rul. 57-32, 1957-1 C.B. 301.

112.15 Erroneous backup withholding; claims by exempt recipients. Guidelines are provided for exempt recipients that want to obtain a refund of taxes erroneously withheld under section 3406, relating to backup withholding, and who are not otherwise required to file an income tax return. §§35a.9999-1, 35a.9999-3. (Sec. 601.105, S.P.R.; Sec. 3406, '54 Code.)

Rev. Proc. 84-80, 1984-49 I.R.B. 7.

112.16 Excess FICA; medicare extended to federal employees. Guidance is provided, in the form of questions and answers, relating to the extension of the FICA hospital insurance tax to federal employees. §§31.3101-1, 31.3111-1, 31.3121(a)-1, 31.6302(c)-1, 31.6413(c)-1. (Sec. 601.401, S.P.R.; Secs. 3101, 3111, 3121, 6302, 6413, '54 Code.)

Rev. Proc. 83-30, 1983-1 C.B. 722.

112.17 Excess hospital insurance tax withheld; federal employee; self-employed or employed in off-duty hours. If a federal employee who has been continuously employed since December 31, 1983, is also self-employed during off-duty hours, the individual's maximum income that is subject to the hospital insurance self-employment tax is reduced by the amount of wages subject to the hospital insurance tax. If the federal employee was employed instead of self-employed during off-duty hours, both the federal and outside wages are subject to the hospital insurance tax, but a credit may be taken on the individual's federal income tax return for any excess taxes deducted because of the dual employment. §31.6413(c)-1. (Secs. 1401, 1402, 3101, 3111, 3121, 6413; '54 Code.)

Rev. Rul. 84-56, 1984-1 C.B. 184.

112.18 Excess remuneration repaid by employee. Examples illustrate the treatment of employee taxes withheld and employer taxes paid on amounts advanced to an employee in excess of remuneration earned where such excess is repaid by the employee, under an employment contract, upon termination of the employer-employee relationship. S.S.T. 316 superseded. §§31.3121(a)-1, 31.3306(b)-1, 31.3401(a)-1, 31.6413(a)-1. (Secs. 61, 162, 451, 461, 3121, 3306, 3401, 6413; '54 Code.)

Rev. Rul. 79-311, 1979-2 C.B. 25.

112.19 FICA; claim; overpayment on employee meals and lodging; employee consents. An employer is not required to secure the written consent of its employees before filing a claim for FICA tax when the employer paid both its own and its employees' shares of FICA tax without making any deduction from the employees' pay. §§31.6205-1, 31.6402(a)-1, 31.6413(a)-2. (Secs. 119, 6205, 6402, 6413; '54 Code.)

Rev. Rul. 83-136, 1983-2 C.B. 244.

112.20 FICA; departing alien. An alien, who after performing services in employment in the U.S. returns to his home country with no intention of performing such services again, has no right to a refund of FICA tax. S.S.T. 216 superseded. §31.3121(b)-3. (Sec. 3121, '54 Code.)

Rev. Rul. 70-437, 1970-2 C.B. 200.

112.21 FICA; employee under both FICA and RRTA. An individual is not entitled to any credit against his income tax liability solely because of the payment of the employee tax under

both the RRTA and FICA during the same year. (Secs. 3101, 3201; '54 Code.)

Rev. Rul. 55–690, 1955–2 C.B. 14.

112.22 FICA; employees of foreign subsidiary. Social security coverage of individuals employed by a foreign subsidiary of a domestic corporation is limited to U.S. citizens and such coverage ceases on the date an employee becomes a citizen of a foreign country. Any social security tax paid by the domestic corporation on remuneration for services performed during the period the employee was a U.S. citizen is not refundable, but amounts paid during the period he is a citizen of a foreign country may be adjusted or refunded within the prescribed statutory period. §36.3121(1)(1)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 57–576, 1957–2 C.B. 641.

112.23 FICA; parent and subsidiary corporations; prior years; guidelines. Guidelines are set forth for the collection of the taxes imposed by the FICA for a prior year in cases involving a parent and its subsidiary corporations where the wage limitation of section 3121(a)(1) of the Code was exceeded in such prior year with respect to a particular employee who performed substantial services for more than one of the corporations although paid only by the parent. §§31.3101–1, 31.3111–1, 31.3121(a)–1, 31.6413(c)–1. (Sec. 601.104, S.P.R.; Secs. 3101, 3111, 3121, 6413, '54 Code.)

Rev. Proc. 74–16, 1974–1 C.B. 437.

112.24 FICA; tax paid by employer without deduction from wages. Payment by an employer of employee FICA tax without deduction from the employee's wages under an agreement between them constitutes "wages" for purposes of income tax withholding; however, for purposes of the FICA, no additional tax is applicable to the employee tax liability incurred by the employer. Also, if the employee has two or more employers he is entitled to the special refund of excess tax paid on an amount exceeding the maximum annual wage limitation. §§31.3101–1, 31.3102–1, 31.3121(a)(1)–1, 31.3401(a)–1, 31.6413(c)–1. (Secs. 3101, 3102, 3121, 3401, 6413; '54 Code.)

Rev. Rul. 74–75, 1974–1 C.B. 19.

112.25 FICA; tax paid by employer without deduction from wages. Payments by an employer of employee FICA tax without deduction from employee's wages under an agreement between them are additional wages for FICA purposes, the amount of wages to be determin[illegible] by a formula. The additional FICA wages so determined are includible in the employee's gross income and are wages for purposes of income ta withholding. If otherwise appropriate, the employer may deduct the payments as ordinary and necessary business expenses under section 162. Rev. Rul. 74–75 modified. §§31.3101–1, 31.3306(b)(6)–1, 31.3401(a)–1, 31.6051–1, 31.6413(c)–1. (Secs. 61, 162, 3101, 3306, 3401, 6051, 6413; '54 Code.)

Rev. Rul. 86–14, 1986–5 I.R.B. 33.

112.26 FICA and FUTA; overpayment on employee meals and lodging. Instructions are provided for employers making adjustments of overpaid FICA taxes, filing claims for refunds and credits of FICA and FUTA taxes overpaid, and for perfecting protective claims for refund previously filed as a result of the decision of the Supreme Court in *Rowan Companies, Inc.* §§31.6402(a)–2, 31.6402(a)–3, 31.6413(a)–1, 31.6413(a)–2, 301.6511(a)–1, 301.6513–1. (Sec. 601.602, S.P.R.; Secs. 6402, 6413, 6511, 6513, '54 Code.)

Rev. Proc. 81–69, 1981–2 C.B. 726.

112.27 FICA tax and partner's self-employment tax. A partner reported and paid self-employment tax on $3,600 for the fiscal year ended October 31, 1953. The partnership incorporated on November 1, 1953, and he received wages in 1953 of $1,700 from the corporation from which employee tax was deducted and paid. Refund of the employee tax paid with respect to wages received from the corporation during 1953 is not allowable. §§39.481–2, 408.801. (Secs. 481, 1421, '39 Code; Secs. 1402, 3321, '54 Code.)

Rev. Rul. 54–603, 1954–2 C.B. 323.

112.28 FICA tax withheld in excess of wage limitation. Employee tax withheld with respect to more than $3,600 of wages paid by two or more employers may be credited against the employee's income tax liability. However, employee tax withheld with respect to wages in excess of $3,600 paid by a single employer should be adjusted between the employer and employee. If such an overcollection cannot be so adjusted, a claim for credit or refund may be filed. §§39.35–2, 408.801, 408.802. (Secs. 35, 1401,1421, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–221, 1954–1 C.B. 73.

112.29 FUTA; contributions to unemployment compensation fund of States; election. An employer, not subject to the unemployment compensation law of a State, who makes an election requiring payment of contributions to its unemployment compensation fund may credit such contributions against the FUTA tax. S.S.T. 165 superseded. §31.3302(a)–1. (Sec. 3302, '54 Code.)

Rev. Rul. 69–356, 1969–1 C.B. 270.

112.30 FUTA; State bank converted to national bank. Where a State bank is converted into a national bank pursuant to section 35, title 12, U.S.C., the national bank is considered the same employer and taxpayer as the State bank for employment tax purposes, including the filing of returns and the credit for contributions made by the State bank to State unemployment funds. S.S.T. 188 distinguished. §§31.3121(d)–2, 31.3301–1, 31.3302(a)–1, 31.3401(d)–1. (Secs. 3121, 3301, 3302, 3401; '54 Code.)

Rev. Rul. 68–63, 1968–1 C.B. 439.

112.31 Interest; overpayment of FICA. With respect to overpaid FICA tax the Service may refund to the employer both the employer's and the employee's share of FICA tax if the employee furnishes a written consent and statement to the employer. The Service may also refund the employer's share if the employee does not furnish a consent and statement after the employer has made a reasonable attempt to obtain them. §§31.6402(a)–2, 31.6413(a)–2, 31.6413(b)–1, 301.6611–1. (Secs. 6402, 6413, 6611; '54 Code.)

Rev. Rul. 81–310, 1981–2 C.B. 241.

112.32 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75–58, 1975–1 C.B. 374.

112.33 Limitations; RRTA reduced by amount of barred FICA tax deficiency. The Service may reduce the amount of a RRTA refund by the amount of a barred FICA tax deficiency on the same wages if a determination is made that an employer is a FICA employer rather than a RRTA employer. §§31.3503–1, 301.6402–1, 301.6511(b)–1. (Secs. 3503, 6402, 6511; '54 Code.)

Rev. Rul. 84–98, 1984–27 I.R.B. 14.

112.34 Nonresident aliens; withheld taxes. The income tax withheld from wages paid after December 31, 1966, to nonresident alien employees for services performed within the U.S. cannot be refunded by the employer. The nonresident alien employee must file a timely return, Form 1040NR, to obtain a refund. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 69–29, 1969–1 C.B. 273.

112.35 Offset; overpayment against barred liability. Interest and penalties barred by the statute from assessment will be considered in determining the amount of an overpayment allowable on the basis of a timely filed claim for the same taxable year and the same type of tax. §301.6402–1. (Sec. 3770, '39 Code.; Sec. 6402, '54 Code.)

Rev. Rul. 56–492, 1956–2 C.B. 949.

112.36 Release of excess tax withheld under German convention. Interim rules give effect to the reduced rate of withholding of U.S. income tax from dividends paid by U.S. corporations to residents or companies of Germany under the Protocol brought into force December 27, 1965, and provide for the release of excess tax withheld or for refund where the withheld tax has been paid to the Government. §31.6402(a)–1. (Secs. 1441, 6402, '54 Code.)

Rev. Proc. 67–24, 1967–1 C.B. 625.

112.37 Restricted interest. Guides and instructions for the computation of restricted interest are set forth. Modified to provide that rules regarding r striction of interest are not applicable where one taxpayer' s overpayment is credited, with his consent, to another taxpayer's deficiency. Modified by Rev. Procs. 83–58 and 84–66. §§301.6601–1, 301.6611–1. (Sec. 601.104, S.P.R.; Sec. 3771, '39 Code; Secs. 6601, 6611, '54 Code.)

Rev. Proc. 60–17, 1960–2 C.B. 942; Rev. Proc. 65–20, 1965–2 C.B. 1003.

112.38 Restricted interest. If an overpayment is applied as credit to unpaid interest, penalty, or addition to tax for the same year and type of tax, interest is allowed from the date of overpayment to the date of assessment of the amount to which the credit is applied. Rev. Proc. 60–17 modified. §301.6611–1. (Sec. 601.104, S.P.R.; Sec. 6611, '54 Code.)

Rev. Proc. 83–58, 1983–2 C.B. 575.

112.39 Successor employer; statutory merger or consolidation. Where a statutory merger or consolidation takes place prior to the expiration of the first twenty weeks of a calendar year, the resultant corporation is subject to the FUTA tax with respect to the premerger or preconsolidation employment of individuals by the absorbed corporation and is entitled to the credits against such tax for contributions to State unemployment funds made by the absorbed corporation. The resultant corporation is also the same employer as the absorbed corporation for purposes of the FICA taxes and the withholding of income tax. §§31.3121(d)–2, 31.3301–1, 31.3302(a)–1, 31.3401(d)–1. (Secs. 3121, 3301, 3302, 3401; '54 Code.)

Rev. Rul. 62–60, 1962–1 C.B. 186.

112.40 Withholding; new Form W–4 information; repayment or reimbursement. An employer may not repay or reimburse an employee for income taxes withheld during the year merely because the employee furnishes a new Form W–4 to the employer claiming additional exemptions or exemption from withholding. §§31.3402(f)(2)–1, 31.6413(a)–1. (Secs. 3402, 6413; '54 Code.)

Rev. Rul. 82–84, 1982–1 C.B. 208.

Regulations

114.1 Effective date. The promulgation date of a Treasury regulation or Treasury decision is the date the document is filed by the Division of the Federal Register for public inspection. Ordinarily, a document is published in the Federal Register for the day following the date on which it is filed. (Sec. 7805, '54 Code.)

Rev. Rul. 56–517, 1956–2 C.B. 966.

114.2 Reference to 1939 Code. Any reference in any regulations or other executive document to any provision of the Internal Revenue Code of 1939 shall be deemed also to refer to the corresponding provision of the Internal Revenue Code of 1954 unless inconsistent or otherwise inappropriate.

E.O. 10574, 1954–2 C.B. 732.

114.3 Title heading revised. Effective January 1, 1961, the regulations under both the 1939 and 1954 Codes were redesignated under the heading "Title 26—Internal Revenue", in the Code of Federal Regulations. The regulations under tax conventions were transferred to subchapter G and redesignated.

1961–1 C.B. 863.

Reproduction of forms and returns

(See: Forms)

Returns

(See also: Forms)

116.1 Agricultural and nonagricultural services. Farm employers, including exempt organizations, who pay wages for both agricultural labor and nonagricultural services, must (1) segregate the wages for agricultural labor from other wages paid; (2) file Form 943 reporting the taxes due under the FICA with respect to wages paid to employees for agricultural labor; and (3) file Form 941 reporting the FICA taxes on, and the income tax withheld from, wages for other "employment." (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 56–118, 1956–1 C.B. 467.

116.2 Amended; claims; overpayment of FICA and FUTA; employee meals and lodging. Instructions are provided for employers making adjustments of overpaid FICA taxes, filing claims for refunds and credits of FICA and FUTA taxes overpaid, and for perfecting protective claims for refund previously filed as a result of the decision of the Supreme Court in *Rowan Companies, Inc.* §§31.6402(a)–2, 31.6402(a)–3, 31.6413(a)–1, 31.6413(a)–2, 301.6511(a)–1, 301.6513–1. (Sec. 601.602, S.P.R.; Secs. 6402, 6413, 6511, 6513, '54 Code.)

Rev. Proc. 81–69, 1981–2 C.B. 726.

116.3 Delinquent; penalty. If an employer, after the 30th day of the month following the calendar quarter for which his return of withheld income tax is made, ascertains a slight error in his computation of the amount of tax due and when filing his return on or before the 10th day of the second month following such quarter accompanies the return and depositary receipts with a check covering the minor adjustment, no penalty for delinquent filing will be asserted. §406.605. (Sec. 1631, '39 Code; Sec. 6651, '54 Code.)

Rev. Rul. 54–45, 1954–1 C.B. 224.

116.4 Delinquent; preparation by District Director. The preparation and execution of a Form 941 by the District Director stops the running of the period of delinquency. §§301.6020–1, 301.6651–1. (Secs. 6020, 6651; '54 Code.)

Rev. Rul. 69–397, 1969–2 C.B. 263.

116.5 Employee compensation; deceased employee; death benefit; information reporting. An employer must report wages or other compensation for services performed by a former deceased employee and paid to the estate or the person entitled to receive the payment of the employee on Form 1099–MISC, Statement for Recipients of Miscellaneous Income, as nonemployee compensation. Rev. Ruls. 64–150 and 71–456 superseded. §§31.3121(a)–1, 31.3401(a)–1, 31.6051–1. (Secs. 691, 3121, 3401, 6041, 6051; '54 Code.)

Rev. Rul. 86–109, 1986–37 I.R.B. 14.

116.6 Estate; ancillary administrators in other states. An estate is the employer and only one return for each return period should be filed by the domiciliary administrator with respect to wages paid to all employees of the estate even though there are ancillary administrators in other states. S.S.T. 380 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1, 31.6011(a)–1 31.6011(a)–3, 31.6011(a)–4. (Secs. 3121, 3306, 3401, 6011; '54 Code.)

Rev. Rul. 70–22, 1970–1 C.B. 204.

116.7 Examination; bankruptcy. A trustee or other fiduciary of a bankruptcy estate who is ready to close the estate may obtain an expeditious audit of any Federal tax returns filed by the fiduciary. (Sec. 601.105, S.P.R.)

Rev. Proc. 76–23, 1976–1 C.B. 562.

116.8 Examination; bankruptcy estate. Procedures are provided for the trustee (or debtor in possession) to obtain a prompt determination by the Service of any unpaid tax liability of the bankruptcy estate incurred during the administration of the estate. (Sec. 601.105, S.P.R.)

Rev. Proc. 81–17, 1981–1 C.B. 688.

116.9 Examination; reopening closed cases. Rules are set forth governing the reopening of cases closed by district offices or service centers. Certain types of cases in which reconsideration is not considered a reopening are listed. Rev. Proc. 81–35 superseded. §301.7605–1. (Sec. 601.105, S.P.R.; Sec. 7605, '54 Code.)

Rev. Proc. 83–19, 1983–1 C.B. 677.

116.10 Facsimile signatures. Corporate officers or duly authorized agents may use a facsimile signature in making returns on Form 940, 941, and 943 subject to conditions that provide for verification of the validity of the facsimile. §§31.6011(a)–7, 31.6061–1. (Secs. 6011, 6061; '54 Code.)

Rev. Rul. 82–29, 1982–1 C.B. 200.

116.11 Failure to file; assignee for benefit of creditors. An assignee of an insolvent debtor receiving assets under a general assignment for creditors may be liable for the delinquency penalty if he fails to file a return due after the assignment, even though the facts giving rise to the requirement for the return occurred before the assignment. §408.909. (Sec. 3612(d), '39 Code; Sec. 6651, '54 Code.)

Rev. Rul 56–158, 1956–1 C.B. 596.

116.12 Failure to file; conference procedures for certain unagreed cases. The responsibility for conducting conferences relating to employment tax returns prepared in certain unagreed cases, pursuant to section 6020(b), has been transferred from the district Audit Division to the district Collection Division or the district Collection and Taxpayer Service Division; a procedure is established for processing these cases. §301.6020–1. (Sec. 601.105, S.P.R.; Sec. 6020, '54 Code.)

Rev. Proc. 77–13, 1977–1 C.B. 570.

116.13 Failure to file; delinquency penalty; changes under 1954 Code. The effect of the delinquency penalty provisions of the Internal Revenue Code of 1954 is set forth. (Sec. 6651, '54 Code.)

Rev. Rul. 54–427, 1954–2 C.B. 42.

116.14 Failure to file; employer's quarterly return; penalty. Interest is assessable against an employer who fails to deduct and withhold tax from the wages of an employee as required by section 3402 of the Code, even though the employee subsequently files an income tax return and satisfies his income tax liability. Modified to provide that where a delinquency penalty is to be assessed against an employer under section 6651 for failure to file the required quarterly tax return and the provisions of section 3402(d) are applicable, such penalty should be computed from the due date of the return to the date it is filed. §§31.3402(d)–1, 301.6601–1, 301.6651–1. (Secs. 3402, 6601, 6651; '54 Code.)

Rev. Rul 58–577, 1958–2 C.B. 744; Rev. Rul. 66–113, 1966–1 C.B. 244.

116.15 Fiduciary of trust or estate. A trust or estate managed by a fiduciary is generally the employer and returns reporting employment taxes in the name of the trust or estate are to be filed by the fiduciary. S.S.T. 120 superseded. §§31.6011(a)–1, 31.6011(a)–3, 31.6011(a)–4. (Sec. 6011, '54 Code.)

Rev. Rul. 69–657, 1969–2 C.B. 189.

116.16 Form 940 incomplete; assessments; limitation period. A Form 940 indicating that no tax is due which does not conform with the regulations under the FUTA is not a return. If subsequently tax is found to be due, the filing of such form would not start the running of the statute of limitations or preclude the assertion of a delinquency penalty or assessment of the tax at any time. §301.6501(c)–1. (Sec. 6501, '54 Code.)

Rev. Rul. 57–554, 1957–2 C.B. 854.

116.17 Form 941 incomplete; assessments; limitation period. Situations illustrate the validity of Employer's Quarterly Federal Tax Return, Form 941, filed with certain blank lines and "none" entries for purposes of the period of limitation on assessment and the addition to tax for failure to file a timely return. §§31.6011(a)–1, 31.6011(a)–4, 31.6011(a)–7, 301.6501(a)–1, 301.6651–1. (Secs. 6011, 6501, 6651; '54 Code.)

Rev. Rul. 72–161, 1972–1 C.B. 397.

116.18 Form 941c; statement to correct wage information. Application by agents for authority to perform acts required of employers under the employment tax provisions of the Code should be made to the District Director or Director of a Service Center with whom the agent will file the returns. The application should be accompanied by Form 2678, Employer Appointment of Agent. Further, the time and manner of filing returns by agents and for correcting wage reports under the FICA are prescribed. Rev. Proc. 57–31 superseded. Amplified by Rev. Procs. 80–4 and 84–33. §31.3504–1. (Sec. 601.401, S.P.R.; Sec. 3504, '54 Code.)

Rev. Proc. 70–6, 1970–1 C.B. 420.

116.19 Information; brokers; securities transactions. Information returns are not required of a broker in any instance in which the broker receives the instructions of the seller from a registered securities or commodities dealer or a financial institution. §31.3452(c)–1. (Secs. 3452, 6045, '54 Code.)

Rev. Rul. 83–123, 1983–2 C.B. 221.

116.20 Information; payments to Mexican workers. Payments to Mexican Nationals for services which constitute agricultural labor are required to be reported on Form 1099, where the total compensation of the worker, including his wages for services which do not constitute agricul-

tural labor, amount to $600 or more during the taxable year. (Secs. 3401, 6041; '54 Code.)

Rev. Rul. 56–679, 1956–2 C.B. 782.

116.21 Information; relief under section 530 of the Revenue Act of 1978. A taxpayer did not treat certain individuals as employees on its Form 941, Employer's Quarterly Federal Tax Return, and did not file timely Forms 1099–NEC, Statement for Recipients of Nonemployee Compensation. Upon audit and after the deadline for filing Forms 1099–NEC, the taxpayer filed them. The taxpayer was not entitled to relief under section 530 of the Revenue Act of 1978. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401, 6041, 6081; '54 Code.)

Rev. Rul. 81–224, 1981–2 C.B. 197.

116.22 Information; reproduction of Forms 1096, 1098, 1099 series, W–2G and W–3G. Requirements are set forth for reproducing paper substitutes for Forms 1096, 1098, 1099 series, 5498, W–2G and W–3G, and for furnishing substitute statements to recipient payees. Rev. Proc. 84–70 superseded. §31.3402(q)–1. (Sec. 601.602, S.P.R.; 402, 408, 6041, 6041A, 6042, 6043, 6044, 6045, 6047, 6049, 6050A, 6050B, 6050D, 6050E, 6050H, 6050J, '54 Code.)

Rev. Proc. 85–25, 1985–1 C.B. 558.

116.23 Information; tips; rate reduction. Guidance is provided for employers that want to apply to the district director to have the tip rate of a large food and beverage establishment reduced from 8 percent to a figure not less than 2 percent. §31.6053–3. (Sec. 601.401, S.P.R.; Sec. 6053, '54 Code.)

Rev. Proc. 85–10, 1985–1 C.B. 499.

116.24 Information; tips; rate reduction. Guidance is provided to both employers and employees of certain large food and beverage establishments who want to petition the district director for a reduction in the tip rate allocation figure from 8 percent of the gross receipts to a figure not below 2 percent. Rev. Proc. 85–4, as modified by Rev. Proc. 85–10, is amplified and superseded. §31.6053–3. (Sec. 601.401, S.P.R.; Sec. 6053, '54 Code.)

Rev. Proc. 86–21, 1986–17 I.R.B. 29.

116.25 Information; tips from charge customers. The employer and employee's reporting requirements for tips added to a waiter's check by a charge customer and paid over to the waiter by his employer are clarified. The provisions of this Revenue Ruling relating to charge tips that are not reported by the employee to the employer on Form 4070, or a substitute, will be applied for calendar years beginning January 1, 1977. Rev. Ruls. 69–28 amplified and 75–400 superseded. §§31.3121(q)–1, 31.3401(f)–1, 31.6051–1, 31.6053–1, 301.7805–1. (Secs. 451, 3121, 3401, 6041, 6051, 6053, 7805; '54 Code.)

Rev. Rul. 76–231, 1976–1 C.B. 379.

116.26 Inspection; charges for copies. Fees the Service charges taxpayers for furnishing copies of returns and related documents have been changed. Rev. Proc. 66–3, as modified by Rev. Proc. 84–71, is further modified. (Sec. 601.702, S.P.R.)

Rev. Proc. 85–56, 1985–46 I.R.B. 45.

116.27 Inspection; charges for copies and verification. Increased charges for copies of returns, related documents, and for verification of Forms 1040A or 1040EZ, are provided. Rev. Proc. 66–3 modified. §§301.6103(a)–1, 301.6103(a)–2. (Sec. 601.702, S.P.R.; Sec. 6103, '54 Code.)

Rev. Proc. 84–71, 1984–44 I.R.B. 15.

116.28 Inspection; delegation of authority; Commissioner. The functions of the Secretary of the Treasury prescribed by any Treasury Decision relating to the granting of permission to inspect returns to any agency of the Executive Branch of the U.S. Government have been delegated to the Commissioner of Internal Revenue. Such functions may be exercised by any officer or employee of the Revenue Service who is so authorized by the Commissioner.

Treas. Dept. Order 150–35 (Rev. 1), 1959–1 C.B. 767.

116.29 Inspection; general rules. Returns made in respect of the unemployment tax shall be open to inspection by certain classes of persons having a material interest which will be affected by information contained in such returns, and by certain classes of State and Federal Government establishments. Rules providing the procedure for such inspection and enumerating the classes of persons and State and Federal Government establishments which have the privilege of inspection and the returns which they may inspect are set forth. §§301.6103(a)–1, 301.6103(d)–1. Amended by T.D. 6700. (Sec. 6103, '54 Code.)

T.D. 6543, 1961–1 C.B. 671; T.D. 6546, 1961–1 C.B. 682; E.O. 10906, 1961–1 C.B. 681.

116.30 Inspection; general rules. Returns and related documents made in respect to the unemployment tax shall be open to inspection, at the discretion of the District Director, to certain classes of persons having a material interest which will be affected by information contained in such returns. Rules providing the procedures to be followed in permitting inspection of returns and related documents and the increase in charges effective February 1, 1966, for furnishing copies and certification of such returns and documents, are set forth. Rev. Proc. 62–9 superseded. Modified by Rev. Proc. 84–71. Rev. Rul. 229 sets forth the procedures for the inspection of returns under the 1939 Code. §§301.6103(a)–1, 301.6103(a)–2. (Sec. 601.702, S.P.R.; Sec. 55, '39 Code; Sec. 6103, '54 Code.)

Rev. Rul. 229, 1953–2 C.B. 152; Rev. Proc. 66–3, 1966–1 C.B. 601.

116.31 Inspection; general rules. Authority to inspect certain returns by certain classes of persons and State and Federal Government establishments shall be in accordance with regulations in enumerated Treasury Decisions. Regulations provide that other records, reports, information received orally or in writing, factual data, documents, papers, abstracts, memoranda, or evidence taken, relating to returns, including any reproductions or recordings thereof, are open to inspection. §301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 11650, 1972–1 C.B. 381; T.D. 7162, 1972–1 C.B. 382.

116.32 Inspection; House Committee on the Judiciary. Any income, excess-profits, estate, gift, unemployment, or excise tax return, including all reports, documents, or other factual data, relating thereto, shall during the Ninety-first Congress, be open to inspection by the House Committee on the Judiciary or any duly authorized subcommittee thereof. §301.6103(a)–101. (Sec. 6103, '54 Code.)

E.O. 11535, 1970–2 C.B. 289.

116.33 Inspection; litigation and grand jury proceedings. Authority to inspect certain returns for use in grand jury proceedings and in litigation by United States attorneys and attorneys of the Department of Justice. §301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 11706, 1973–1 C.B. 592; T.D. 7266, 1973–1 C.B. 593.

116.34 Inspection; officials of possessions of U.S. Officials of possessions of the U.S. may inspect returns of estate, gift, unemployment, income, and certain excise taxes. Rules are provided for the manner, time, and place of inspection. §301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 11102, 1963–1 C.B. 299; T.D. 6646, 1963–1 C.B. 299.

116.35 Inspection; President and authorized White House employees. Restrictions have been placed on taxpayers' returns that may be delivered to or open to inspection by the President, or the employees of the White House Office that may be authorized to receive or inspect such returns on the President's behalf, and on disclosure of information from such returns. §301.6103(a)–1. (Sec. 6103, '54 Code.)

E.O. 11805, 1974–2 C.B. 394.

116.36 Inspection; State governments. Procedures are set forth relating to (1) the inspection by State governments of certain Federal tax returns and related documents, (2) the furnishing to State governments of copies, abstract data, or transcripts of such returns and documents, (3) the increase in charges, effective February 1, 1966, for copies of returns and each certification, and (4) penalty for unlawful disclosure of Federal income tax information by State employees. Rev. Proc. 62–18 superseded. Procedures for inspection by States of returns filed under the 1939 Code are set forth in Rev. Rul. 54–349 as modified by Rev. Proc. 58–15. §§301.6103(a)–1, 301.6103(b)–1, 301.6106–1. (Sec. 601.702, S.P.R.; Sec. 55, '39 Code; Secs. 6103, 6106, '54 Code.)

Rev. Proc. 66–4, 1966–1 C.B. 607.

116.37 Magnetic tape; Form 940; reporting agents. Conditions are set forth under which reporting agents preparing Form 940, Employer's Federal Unemployment Tax Return, can furnish the required information on magnetic tape instead of paper documents. §§31.3504–1, 31.6011(a)–1. (Sec. 601.602, S.P.R.; Secs. 3504, 6011, '54 Code.)

Rev. Proc. 86–26, 1986–22 I.R.B. 9.

116.38 Magnetic tape; Forms 941 and 941E; reporting agents. Requirements are set forth under which reporting agents preparing Form 941, Employer's Quarterly Federal Tax Return, and 941E, Quarterly Return of Withheld Federal Income Tax, can furnish the required information on magnetic tape instead of paper documents. Rev. Proc. 84–11 superseded. §§31.3504–1, 31.6011(a)–1. (Sec. 601.602, S.P.R.; Secs. 3504, 6011, '54 Code.)

Rev. Proc. 86–27, 1986–22 I.R.B. 34.

116.39 Magnetic tape; Forms W–4; reporting requirements. Requirements and conditions are set forth for submitting certain Forms W–4, Employee's Withholding Allowance Certificates, on magnetic tape instead of filing paper returns. Rev. Proc. 84–41 superseded. §§31.3402(b)–1, 31.3402(f)(5)–1, 31.3402(h)(4)–1, 31.3402(p)–1, 31.6001–5. (Sec. 601.602, S.P.R.; Secs. 3402, 6001, 6361, '54 Code.)

Rev. Proc. 86–13, 1986–10 I.R.B. 7.

116.40 Magnetic tape reporting; information returns; Form 8027. Requirements and conditions are set forth for submitting Form 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, on magnetic tape. Rev. Proc. 84–69 superseded. (Sec. 601.602, S.P.R.)

Rev. Proc. 86–45, 1986–49 I.R.B. 15.

116.41 Maritime shipping operators; seagoing employees. Procedures are set forth relating to the reporting of wages and payment of taxes with respect to seamen employed by certain maritime shipping operators. Mim. 6314 modified and superseded. §§31.6011(a)–1, 31.6011(a)–3,

31.6011(a)–4, 31.6302(c)–1. (Sec. 601.401, S.P.R.; Secs. 6011, 6302, '54 Code.)
Rev. Proc. 79–38, 1979–2 C.B. 501.

116.42 Multi-divisional corporation; Form 941. A corporation with numerous divisions in different locations should file for all divisions on one Form 941, Employer's Quarterly Federal Tax Return. §31.6011(a)–7. (Sec. 6011, '54 Code.)
Rev. Rul. 76–73, 1976–1 C.B. 370.

116.43 Partnership; FUTA. Each of three partnerships having certain members common to all of them but having some differences in membership is required to file a separate return for purposes of the FUTA. S.S.T. 67 superseded. §§31.6011(a)–3, 301.7701–1. (Secs. 6011, 7701; '54 Code.)
Rev. Rul. 68–95, 1968–1 C.B. 523.

116.44 Partnership; termination; changes in interests. A change in partnership members due to the death, withdrawal, substitution, or addition of a partner or a shift of interests among existing partners does not, in itself, terminate the partnership for income and employment tax purposes. Not applicable to changes prior to 1954. Applicable to the following situations: (1) a limited partnership whether or not its agreement is silent on continuation upon membership changes (Rev. Rul. 54–484); and (2) where a deceased partner's widow acquires his interest and transfers it to her son (Rev. Rul. 55–93). §§403.205, 408.205. (Secs. 1426, 1607, '39 Code; Secs. 3121, 3306, '54 Code.)
Rev. Rul. 54–484, 1954–2 C.B. 242; Rev. Rul. 55–93, 1955–1 C.B. 404.

116.45 Partnership operating two businesses; Forms 940 and 941. A partnership that operates two separate businesses should file only one Form 940 and Form 941 showing the wages paid employees of both businesses. S.S.T. 182 superseded. §§31.6011(a)–1, 31.6011(a)–3, 31.6011(a)–4. (Sec. 6011, '54 Code.)
Rev. Rul. 69–522, 1969–2 C.B. 240.

116.46 Partnership succeeded by corporation. A partnership that was succeeded by a corporation after the first two months of the calendar year is not required to file a return under the FUTA, but the corporation must file a return for the remaining ten months. S.S.T. 97 superseded. §§31.3306(a)–1, 31.6011(a)–3. (Secs. 3306, 6011; '54 Code.)
Rev. Rul. 68–241, 1968–1 C.B. 524.

116.47 Prepared and executed by Service; additions to tax. A return prepared and executed by the Service under section 6020(b) stops the running of the delinquency period for purposes of additions under section 6651(a)(1) for failure to file; furthermore, additions under section 6651(a)(2) for failure to pay the amount shown on the return are not applicable. §§301.6020–1, 301.6651–1. (Secs. 6020, 6651; '54 Code.)
Rev. Rul. 76–562, 1976–2 C.B. 430.

116.48 Reproduction; Forms 1096, 1099, 5498, W–2G and W–3G. Requirements are set forth for reproducing paper substitutes for Forms 1096, 1099 series, 5498, W–2G and W–3G, and for furnishing substitute statements to the recipient payees. Rev. Procs. 83–26 and 83–49 superseded. §31.3402(q)–1. (Sec. 601.602, S.P.R.; Secs. 402, 408, 1232, 3402, 6041, 6042, 6043, 6044, 6045, 6047, 6049, 6050A, 6050B, 6050D, 6050E, '54 Code.)
Rev. Proc. 84–70, 1984–43 I.R.B. 33.

116.49 State bank converted to national bank. Where a State bank is converted into a national bank, the national bank is considered the same employer and taxpayer as the State bank for employment tax purposes, including the filing of returns and the credit for contributions made by the State bank to State unemployment funds. S.S.T. 188 distinguished. §§31.3121(d)–2, 31.3301–1, 31.3302(a)–1, 31.3401(d)–1. (Secs. 3121, 3301, 3302, 3401; '54 Code.)
Rev. Rul. 68–63, 1968–1 C.B. 439.

116.50 Timeliness; weekend or holiday. Where the due date for filing quarterly employment tax returns or for making deposits of these taxes falls on a Saturday, Sunday or legal holiday, the returns or deposits will be considered timely if made on the next succeeding business day. §§406.605, 406.606, 408.606, 408.607. (Secs. 1430, 1627, '39 Code; Secs. 3121, 3401, '54 Code.)
Rev. Rul. 55–83, 1955–1 C.B. 523.

116.51 Timely filed; taxpayer in foreign country. Tax returns mailed by taxpayers in foreign countries will be accepted as timely filed if they bear an official postmark dated on or before midnight of the last date prescribed for filing, including any extensions. §301.7502–1. (Sec. 7502, '54 Code.)
Rev. Rul. 80–218, 1980–2 C.B. 386.

116.52 Vacation pay; employees' association trust. Vacation allowances distribution by a fund, established pursuant to a labor agreement between an association of employers and an employees' union, may be reported on Form 940, Employer's Annual Federal Unemployment Tax Return. §31.6011(a)–3. (Sec. 601.602, S.P.R.; Sec. 6011, '54 Code.)
Rev. Proc. 68–21, 1968–1 C.B. 817.

Rulings

118.1 Areas in which advance rulings will not be issued. A revised list sets forth those areas of the Code under the jurisdiction of the Associate Chief Counsel (Technical) in which the Service will not issue advance rulings or determination letters. Rev. Procs. 85–22, 85–24, 85–27, 85–28, 85–34 and 85–59 superseded. (Sec. 601.201, S.P.R.)
Rev. Proc. 86–3, 1986–1 I.R.B. 26.

118.2 Issuance procedures. Revised procedures are provided for issuing rulings, determination letters, and information letters, and for entering into closing agreements on specific issues. Rev. Proc. 85–1 superseded. (Sec. 601.201, S.P.R.)
Rev. Proc. 86–1, 1986–1 I.R.B. 6.

118.3 Obsolete. The following Revenue Procedure and Revenue Rulings contain lists of procedures and rulings that are declared obsolete. §301.7805–1. (Sec. 7805, '54 Code.)
Rev. Proc. 74–53, 1974–2 C.B. 508;
Rev. Rul. 67–140, 1967–1 C.B. 387;
Rev. Rul. 67–440, 1967–2 C.B. 445;
Rev. Rul. 68–560, 1968–2 C.B. 601;
Rev. Rul. 69–661, 1969–2 C.B. 265;
Rev. Rul. 70–593, 1970–2 C.B. 300;
Rev. Rul. 71–242, 1971–1 C.B. 424;
Rev. Rul. 72–146, 1972–1 C.B. 408;
Rev. Rul. 72–347, 1972–2 C.B. 648;
Rev. Rul. 72–448, 1972–2 C.B. 649.

118.4 Obsolete. A program for the review of rulings published in the Internal Revenue Bulletin prior to 1953 has been established. The primary objective of this program is to identify and publish lists of those rulings which, although not specifically revoked or superseded, are not considered determinative with respect to future transactions. §301.7805–1. (Sec. 601.201, S.P.R.; Sec. 7805, '54 Code.)
Rev. Proc. 67–6, 1967–1 C.B. 576.

118.5 Oral advice to taxpayers. Rev. Proc. 85–1, Section 16, is modified with respect to the practice of the Service regarding oral advice to taxpayers or their representatives. (Sec. 601.201, S.P.R.)
Rev. Proc. 85–50, 1985–40 I.R.B. 26.

118.6 Publication standards; revenue rulings and revenue procedures. The objectives of, and standards for, publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin are revised to reflect the reorganization of the Internal Revenue Service in accordance with Treasury Department Order No. 150–95, effective March 21, 1982, under Delegation Order No. 190, the establishment of the office of the Associate Chief Counsel (International), and the responsibility of the Assistant Commissioner (Support and Services) for publishing the Internal Revenue Bulletin. Rev. Proc. 78–24 superseded. (Sec. 601.601, S.P.R.)
Rev. Proc. 86–15, 1986–11 I.R.B. 26.

118.7 Technical advice to District Directors; and Chiefs, Appeals Offices; issuance procedures. Revised procedures are provided for furnishing technical advice to District Directors and Chiefs, Appeals Offices. Taxpayer's rights, when such advice has been requested, are also set forth. Rev. Proc. 85–2 superseded. (Sec. 601.105, S.P.R.)
Rev. Proc. 86–2, 1986–1 I.R.B. 19.

Self-employment tax

120.1 Accountant; part-time services. An individual who is engaged on a part-time basis to peform bookkeeping and related services for a corporation, performs the services on the corporation's premises, at hours of his own choosing and without corporate direction or supervision, maintains an office of his own and performs similar services for others, is engaged in a trade or business for self-employment tax purposes. §1.1402(c)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 57–109, 1957–1 C.B. 328.

120.2 Agistor; pasturing and caring for another's cattle. Amounts received by an individual for taking in, pasturing, feeding and caring for another's cattle on his own land (agistment) do not constitute rentals from real estate. If such amounts are received by an individual under circumstances which constitute the carrying on of a trade or business as an agistor, they should be included in computing his net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 56–677, 1956–2 C.B. 564.

120.3 Allowable income tax deductions. Individual taxpayers, other than farmers who elect to use the optional method, must claim all of their allowable deductions, including depreciation, in computing net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 56–407, 1956–2 C.B. 564.

120.4 Arbitrators; state arbitration panel. Individuals serving as voluntary arbitrators in labor disputes on the North Carolina Arbitration Panel are not employees of the State and their remuneration constitutes earnings from self-employment. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 54–411, 1954–2 C.B. 332.

120.5 Armed Forces; combat death. The cancellation of tax liability of a serviceman killed in action while serving in a combat zone does not eliminate the income on which such liability was based. A refund of self-employment tax does not change the amount of self-employment income previously reported and does not necessitate a correction of records previously forwarded to the So-

cial Security Administration. §29.482–1. (Sec. 482, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 55, 1953–1 C.B. 259.

120.6 Attorney; collection of delinquent taxes; Tennessee. An attorney appointed under the Tennessee Code to collect delinquent taxes is not an officer or employee of the State or any political subdivision thereof for purposes of the exception from employment. However, income derived from his services is subject to self-employment tax. S.S.T. 415 superseded. §§1.1402(c)–1, 31.3121(b)(7)–1. (Secs. 1402, 3121; '54 Code.)
Rev. Rul. 70–546, 1970–2 C.B. 205.

120.7 Attorney; engaged by railway company. An attorney performing services for a railway company that maintains control only on what shall be done and pays him a retainer fee is not an employee of that company for purposes of the RRTA but is engaged in a trade or business for self-employment tax purposes. C.T. 15 superseded. §§1.1402(c)–1, 31.3231(b)–1. (Secs. 1402, 3231; '54 Code.)
Rev. Rul. 69–98, 1969–1 C.B. 268.

120.8 Attorney; retained by corporation. An attorney engaged by a corporation and paid an annual retainer to defend it in any suit brought against it during the year is not an employee of the corporation. S.S.T. 86 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–323, 1968–1 C.B. 432.

120.9 Auditor for state municipalities. An individual who examines state tax returns for municipalities to see that they receive their allocable shares of income tax, is not furnished office facilities nor carried on the payroll of the municipalities, and determines his own working hours and the manner in which he performs his services, is not an employee of the municipalities. He is engaged in a trade or business, and the income therefrom is considered in computing net earnings from self-employment. §§39.481–1, 406.203. (Secs. 481(a), 1621(c), '39 Code; Secs. 1402, 3401, '54 Code.)
Rev. Rul. 56–2, 1956–1 C.B. 496.

120.10 Auto repairmen; percentage basis compensation. An individual who operates an automobile body repair shop located in space furnished by an automobile sales agency; furnishes the equipment and supplies; solicits the business, other than that which comes through the agency; controls his employees; quotes prices for repair work; assumes losses from uncollectible accounts; and is paid on a percentage basis; is not an employee of the sales agency, but is engaged in a trade or business for self-employment tax purposes. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 59–261, 1959–2 C.B. 217.

120.11 Barbers; chair rental agreements. A licensed barber who rents a chair in a barber shop for a fixed weekly fee which includes heat, light, water and supplies, furnishes his own barbering tools, determines his own work routine, retains all fees collected without accounting to the shop owner, and the agreement may be terminated by either party at any time upon proper notice, is engaged in a trade or business for self-employment tax purposes. He is not an employee of the shop owner. §1.1402(c)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 57–110, 1957–1 C.B. 329.

120.12 Beautician in beauty salon. A beautician who rents a booth in a beauty salon for a fixed monthly fee, sells and styles wigs that she purchases herself, retains the proceeds received, is free to select her own customers and set her own work schedule, does not receive a guaranteed amount for occasional work on the salon's customers, and who is required to adhere to shop rules with respect to the cleaning of her own work area, maintaining her own tools, and furnishing and maintaining her own uniforms, is engaged in a trade or business for self-employment tax purposes and is not an employee of the beauty salon for employment tax purposes. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 73–592, 1973–2 C.B. 338.

120.13 Blind operators of vending stands. Visually handicapped individuals who, under a license granted by a State commission for the blind, operate and manage vending stands in public buildings are independent contractors and not employees of the commission; net earnings from the operation of the stands constitute self-employment income. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 54–255, 1954–2 C.B. 326.

120.14 Bonding agents. Bonding agents performing services for a bonding company are engaged in a trade or business and income therefrom must be considered in computing net earnings from self-employment; such agents are not employees of the bonding company. S.S.T. 345 superseded §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–582, 1968–2 C.B. 458.

120.15 Butcher; schochet. A schochet who performs slaughtering services at his own convenience and on his own premises for a meat market operator on a piece-work basis and who also performs similar services for persons who bring poultry to him is engaged in a trade or business for self-employment tax purposes. He is not an employee for employment tax purposes. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 57–80, 1957–1 C.B. 324.

120.16 Carpenter and mason; contract work on hourly basis. A carpenter and mason, who obtains work as a result of his reputation and ability to operate on a small scale, furnishes most of the tools and equipment, determines his own hours of work and is paid on an hourly rate, is not an employee of the persons for whom he performs services. He is engaged in a trade or business and his earnings should be considered in computing net earnings from self-employment. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 55–582, 1955–2 C.B. 403.

120.17 Cemetery sexton. An individual engaged to perform services as sexton of a cemetery by the owner for a six month period and who furnishes all labor and maintains the cemetery to the satisfaction of the owner for a lump-sum payment is not an employee. Income derived from such services should be considered in computing net earnings from self-employment. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 55–328, 1955–1 C.B. 98.

120.18 Child care services in own home. Factual situations illustrate the tax treatment of amounts received and amounts expended by individuals providing child care services in their own homes. Rev. Rul. 56–70 superseded. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 61, 62, 162, 170, 1401, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 77–279, 1977–2 C.B. 12.

120.19 Christmas tree sales. Income derived by an individual from the sale of Christmas trees which are grown, without planting or cultivating the soil, on mountainous cut-over timberland owned by him constitutes earnings from self-employment. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 54–194, 1954–1 C.B. 171.

120.20 Church employees; validation of social security coverage. Procedure for validating social security coverage for certain employees of churches, church denominations, church affiliated organizations, or missionary organizations who have erroneously reported wages as self-employment income. §§1.1402(e)(1)–1, 31.3121(b)(8)–1, 31.3121(k)–1. (Sec. 601.401, S.P.R.; Secs. 1402, 3121, '54 Code.)
Rev. Proc. 67–43, 1967–2 C.B. 684.

120.21 City constable. For self-employment tax purposes, an individual is not engaged in a trade or business in the performance as a city constable of the functions of a public office. But when such individual performs similar services in nonofficial capacity, such as serving summonses and other legal process for attorneys, he is engaged in a trade or business, and the income derived therefrom is includible in computing net earnings from self-employment. §1.1402(c)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 66–52, 1966–1 C.B. 203.

120.22 City inspector. An individual with technical knowledge in the engineering field who enters into an agreement with a city to perform services as a materials and equipment inspector under the supervision and direction of the city's resident engineer and is remunerated on a monthly basis is an employee of the city. The income received by him for such services does not constitute self-employment income. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 54–602, 1954–2 C.B. 268.

120.23 Commission; isolated stock sale. The president of a company concluded arrangements for the sale of his company's stock to a corporation receiving a commission for his services. He is not ordinarily engaged in the sale of stock, this being the only arrangement he has concluded. Therefore, this arrangement does not constitute carrying on a trade or business, and income received therefrom is not considered in computing net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 58–112, 1958–1 C.B. 323.

120.24 Commission salespersons. A commission salesperson engaged by a manufacturing company to solicit for its products, and who operates entirely independently and without restriction as to his manner of operations, is not an employee of the company but is engaged in a trade or business for self-employment tax purposes. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 54–412, 1954–2 C.B. 335.

120.25 Community property states. The Service will follow the decisions in *Carrasco v. Secretary of Health, Education and Welfare, Becker v. Harris,* and *Hester v. Harris,* for purposes of the Self-Employment Contributions Act (SECA). The rule in community property states will be the same as in a non-community property states and, pursuant to section 1402(a), in the absence of a partnership, only the spouse carrying on the trade or business will be subject to the taxes imposed under the SECA. §1.1402(a)–8. (Sec. 1402, '54 Code.)
Rev. Rul. 82–39, 1982–1 C.B. 119.

120.26 Computation; fractional parts of year. The maximum tax imposed on self-employment income is applicable to each of two consecu-

tive short periods resulting from approved changes in accounting periods, even though the two periods make up only one calendar year. §1.1402(b)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 69–410, 1969–2 C.B. 167.

120.27 Consultants; fee or retainer basis. A trade consultant who holds his services available to the general public, is remunerated on a fee or retainer basis, and is not subject to the direction and control of his clients as to the means and methods of operation, is not an employee of such clients for purposes of the FICA. Income derived from such activities should be considered in computing net earnings from self-employment. §§39.481–1, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 54–586, 1954–2 C.B. 345.

120.28 Contestants; prizes. An individual who, in addition to part-time employment, enters various and unrelated prize contests in his own behalf, and does not advise or act for others in entering such contests, is not engaged in a trade or business, and the value of the prizes won is not includible in computing net earnings from self-employment. §39.481–3. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 55–258, 1955–1 C.B. 433.

120.29 Contract examination monitor and counselor for Federal agency. An individual who performs services as an examination monitor and counselor for a Federal agency, which has determined under the provisions of section 3122 of the FICA that the individual is not an employee but whose contract specifies the place of work, the hours of work, the general working procedures to be followed, and the right to approve substitutes and dismiss the individual is an employee of the agency, and is not engaged in a trade or business for purposes of the self-employment tax. The remuneration is subject to income tax withholding, but is not subject to the FICA or FUTA. Rev. Ruls. 147 superseded and 56–615 modified. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(c)(6)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3122, 3306, 3401; '54 Code.)
Rev. Rul. 75–343, 1975–2 C.B. 402.

120.30 Corporate director. Fees and other remuneration received by a director of a corporation for services performed on committees of its board of directors are self-employment income. I.T. 4077 superseded. §1.1402(b)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 68–595, 1968–2 C.B. 378.

120.31 Corporate director; fees for services. Fees received by a director of a corporation for performing services on its board of directors are income from a trade or business and includible in computing net earnings from self-employment. Rev. Rul. 58–5 distinguished. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 72–86, 1972–1 C.B. 273.

120.32 Corporate honorary director. Payments received by an honorary director of a corporation who has served as an active director for a period of 20 years and who is no longer required to perform any services for the corporation are includible in net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 80–87, 1980–1 C.B. 189.

120.33 Court-appointed officials. Services performed by individuals appointed by a court pursuant to statutory authority in the capacity of commissioner, receiver, or referee are excluded from the term trade or business. However, services performed as an appraiser or guardian under the same statutory authority may constitute a trade or business for self-employment tax purposes. §1.1402(c)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 58–549, 1958–2 C.B. 425.

120.34 Court reporters; Federal and state. Fees received by Federal Court reporters and official state reporters from the preparation and sale of official transcripts represent income from a trade or business, such activity being aside from their basic duties for which they receive a statutory wage. Therefore, such income is includible in computing net earnings from self-employment. §1.1402(a)–1. (Secs. 1402, 3122; '54 Code.)
Rev. Rul. 58–360, 1958–2 C.B. 423.

120.35 Custodian; Federal armory contract. An individual, awarded a contract to serve as a Federal armory custodian, furnishes all necessary equipment, supplies, and labor required to perform the tasks and to maintain Army standards of cleanliness and sanitation as specified in the contract, assumes responsibility for personal injury or property damage suits and his work is inspected by the commanding officer of the armory, is engaged in a trade or business, the income from which is includible in computing net earnings from self-employment. Distinguished by Rev. Ruls. 68–460 and 68–461. §1.1402(c)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 60–90, 1960–1 C.B. 387.

120.36 Custom services for farmers. Services performed prior to 1955 in the employ of custom operators on the farms of their customers in spreading agricultural lime or in grinding feed products to be used for feeding purposes on such farms are treated as agricultural labor for SECA purposes. Services performed in the employ of such custom operators in transporting lime and equipment, repairing and maintaining equipment as well as clerical and bookkeeping services, relating to such operations, do not constitute agricultural labor. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 54–535, 1954–2 C.B. 266.

120.37 Deliverymen; owner-driver of laundry truck. The owner-driver of a truck, who built up his own pick-up and delivery laundry and dry cleaning service route, entered into an oral agreement with a laundry to occasionally serve customers referred to him by the laundry, but is not subject to supervision by the laundry. He is not an employee of the laundry for purposes of the FICA. Income derived from his service route should be considered in computing net earnings from self-employment. §§39.481–1, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)
Rev. Rul. 54–555, 1954–2 C.B. 339.

120.38 Direct sellers; liability for tax. An individual who performs services as a qualified real estate agent or as a direct seller, as defined in section 3508, is liable for the tax on self-employment income. §§1.1401–1, 1.1402(c)–1, 31.3121(d)–1. (Secs. 1401, 1402, 3121, 3508; '54 Code.)
Rev. Rul. 85–63, 1985–1 C.B. 292.

120.39 Drivers; school bus. An individual who operates a school bus under an agreement with a county board of education, is required to furnish and maintain his own bus, perform services personally except in case of illness, follow prescribed rules, and is remunerated on the basis of the number of seats in the bus and the number of miles traveled, is an employee of the county. Accordingly, remuneration for such services does not constitute net earnings from self-employment. (Secs. 1402, 3121; '54 Code.)
Rev. Rul. 56–172, 1956–1 C.B. 434.

120.40 Drivers; truck; contract carriers. The owner-driver of a truck, a licensed contract carrier, who entered into an agreement with a corporation to haul milk from farms to its plant, is not given instructions to follow, whose route may not be changed without his consent, is responsible for seeing that the route is covered at all times and is paid on a hundredweight basis is not an employee of the corporation, but is engaged in a trade or business for self-employment tax purposes. §31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)
Rev. Rul. 56–453, 1956–2 C.B. 687.

120.41 Electing small business corporation shareholders. Where a small business corporation elects not to be subject to tax, the amounts of its income required to be included in the gross income of each shareholder do not constitute net earnings from self-employment to such shareholder. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 59–221, 1959–1 C.B. 225.

120.42 Engineer; consultant for former employer. An engineer was retired from the service of a corporation and immediately thereafter entered into an agreement with the corporation to perform services as an engineering consultant. Under the circumstances, he is not an employee of the company, but is engaged in a trade or business for self-employment tax purposes. Amplified by Rev. Rul. 82–210. §§1.1402(c)–1, 31.3121(d)–1. (secs. 1402, 3121; '54 Code.)
Rev. Rul. 57–10, 1957–1 C.B. 314.

120.43 Engineer; consultant to former employer. An engineer retired from the service of a corporation and immediately thereafter entered into a consulting contract with the former employer that prohibited the engineer from performing work for any other business or individual. The agreement to provide services exclusively for one client does not preclude liability for self-employment tax. Rev. Rul. 57–10 amplified. §§1.1401–1, 1.1402(c)–1. (Secs. 1401, 1402; '54 Code.)
Rev. Rul. 82–210, 1982–2 C.B. 203.

120.44 Exemption; ministers of church. A duly ordained, commissioned, or licensed minister of a church may, on religious grounds, be granted an exemption from social security coverage and the self-employment tax provided that the church referred to in Form 4361 ordained, commissioned, or licensed the minister and that the church is described in sections 501(c)(3) and 170(b)(1)(A)(i). §1.1402(e)–2A. (Sec. 1402, '54 Code.)
Rev. Rul. 76–415, 1976–2 C.B. 255; Rev. Rul. 80–59, 1980–1 C.B. 191.

120.45 Exemption; nonreligious conscientious objections. A self-employed individual may not receive a self-employment tax exemption based on his nonreligious conscientious objections. §§1.1402(e)–2A, 1.1402(h)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 75–189, 1975–1 C.B. 289.

120.46 Exemption; totalization agreement. Procedures are set forth for implementing section 317(b) of the Social Security Amendments of 1977, which relates to exemption from social security taxes on certain self-employment income or wages during any period in which there is a totalization agreement in effect between the U.S. and a foreign country. Amplified by Rev. Proc. 84–54. §§1.1401–1, 31.3101–1, 31.3111–1. (Secs. 601.401, 601.602, S.P.R.; Secs. 164, 901, 1401, 3101, 3111, '54 Code.)
Rev. Proc. 80–56, 1980–2 C.B. 851.

120.47 Exemption; totalization agreement; substantiation procedures. Procedures are set forth for securing statements that self-employed individuals, employees, or employers are subject to social security coverage in foreign countries that have totalization agreements with the United States. The statements are required in order to substantiate exemption from the taxes im-

posed by FICA or SECA. Rev. Proc. 80–56 amplified. §§1.1401–1, 31.3101–1, 31.3111–1. (Secs. 601.401, 601.602, S.P.R.; Secs. 1401, 3101, 3111, '54 Code.)

Rev. Proc. 84–54, 1984–28 I.R.B. 11.

120.48 Farmers; chick raising; broiler production agreement. A farm operator engaged in raising chicks pursuant to a broiler production agreement with a feed company whereby the net profits are divided equally between the parties is not an employee of the feed company. The income which the farm operator derives from raising chicks should be included in computing his net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 58–568, 1958–2 C.B. 730.

120.49 Farmers; gasoline tax credit. The amount of credit allowable for gasoline used on a farm for farming purposes after June 30, 1965, should be included in the gross income of a cash-basis farmer in the year in which he files a timely income tax return on which the credit is taken. An accrual-basis farmer should include the amount of the credit in gross income in the taxable year in which the gasoline is used. These rules are applicable in determining net profit or loss for income tax purposes and in determining net earnings for self-employment tax purposes. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 67–2, 1967–1 C.B. 13.

120.50 Farmers; grain storage fees paid by Commodity Credit Corporation. Grain storage fees paid to a farm operator under the price support loan program of the Commodity Credit Corporation are to be regarded as attributable to the trade or business of farming and considered in computing his self-employment income. However, grain storage fees paid to a farm landlord for the storage of a crop in respect of which he did not materially participate are excluded as rental income. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 65–149, 1965–1 C.B. 434.

120.51 Farmers; optional method; Form 2190. Form 2190, Change in Method of Computing Net Farm Earnings From Self-Employment, is the form prescribed for use by farmers in place of filing an amended return to effect or revoke an election to use the optional method to report net earnings from self-employment. §1.1402(a)–1. (Sec. 601.602, S.P.R.; Sec. 1402, '54 Code.)

Rev. Proc. 57–14, 1957–1 C.B. 744.

120.52 Farmers; partial cancellation of indebtedness to F.H.A. The cancelled portion of an emergency loan granted by the Farmers Home Administration to a farmer who suffered an uninsured drought loss to the farmer's growing crops, in which the farmer had no adjusted basis at the time of loss, is includible in computing net earnings from self-employment. Rev. Rul. 73–408 amplified. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 76–500, 1976–2 C.B. 254.

120.53 Farmers; payments under acreage reserve program. Payments and cost-sharing benefits under the acreage and conservation reserve programs of the Soil Bank Act are includible in the gross income of the recipient whether paid in cash, grain, or reduction of Commodity Credit Corporation loans. Further, such payments are includible in the recipient's net earnings from self-employment; however, if he does not operate or materially participate in the operation of his farm they are not includible. §1.1402(a)–1. (Secs. 61, 451, 1402; '54 Code.)

Rev. Rul. 60–32, 1960–1 C.B. 23.

120.54 Farmers; rental from leased land. Where lease agreements were entered into between a steel company and several farm owners in order to absolve the company from liability for damages to the farmers' property located on the leased lands, the amounts received by the farmers, pursuant to the leases, are rentals from real estate and are not includible in computing the farmers' net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 60–170, 1960–1 C.B. 357.

120.55 Farmers; share-farming arrangements; material participation. Where a landlord of a farm engaged an individual to manage and supervise the operation of his farm, paid a significant part of the costs of production and retained the right to approve crop and management plans, the manager's services are considered the landlord's and farm rental income received by the landlord is considered in computing net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 64–32, 1964–1 (Part 1) C.B. 319.

120.56 Farmers; 66 percent rule. A farm operator who follows the optional 66 percent rule for computing his net earnings from self-employment is not subject to compulsory liability for the self-employment tax where the applicaton of such rule results in a figure for net earnings of less than $400, even though his actual earnings from such self-employment during the year are $400. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 59–403, 1959–2 C.B. 195.

120.57 Federal employee; self-employed or employed in off-duty hours; liability for hospital insurance tax. If a federal employee who has been continuously employed since December 31, 1983, is also self-employed during off-duty hours, the individual's maximum income that is subject to the hospital insurance self-employment tax is reduced by the amount of wages subject to the hospital insurance tax. If the federal employee was employed instead of self-employed during off-duty hours, both the federal and outside wages are subject to the hospital insurance tax, but a cr[illegible] may be taken on the individual's federal incom[illegible]ax return for any excess taxes deducted because of the dual employment. §31.6413(c)–1. (Secs. 1401, 1402, 3101, 3111, 3121, 6413; '54 Code.)

Rev. Rul. 84–56, 1984–1 C.B. 184.

120.58 Fiduciaries of decedents' estates. Guides are set forth for determining whether income received by fiduciaries of decedents' estates should be considered in computing net earnings from self-employment. Distinguished by Rev. Rul. 72–86. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 58–5, 1958–1 C.B. 322.

120.59 Fishing; earnings deposited in capital construction fund. An individual, who is engaged in the business of commercial fishing and whose earnings are subject to self-employment tax, deposited earnings from the business in a capital construction fund that was established under section 607 of the Merchant Marine Act of 1936. The earnings deposited in the capital construction fund do not reduce net earnings from self-employment. §1.1402(a)–2. (Secs. 63, 128, 1402; '54 Code.)

Rev. Rul. 79–413, 1979–2 C.B. 309.

120.60 Fishing boat crew. Crew members of a fishing boat, whose services are excepted from employment under section 3121(b)(20), are engaged in a trade or business for self-employment tax purposes. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 77–102, 1977–1 C.B. 299.

120.61 Foster parents. Factual situations illustrate the tax treatment of amounts received and amounts expended by individuals providing foster care to children. I.T. 4068 superseded. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 61, 62, 151, 162, 170, 280A, 1401, 3121, 3306, 3401, 6041; '54 Code.)

Rev. Rul. 77–280, 1977–2 C.B. 14.

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120.62 Gambling winnings. An individual who gambles regularly and successfully using only his own funds and acting only for himself is not subject to the self-employment tax on his winnings. (Sec. 1402, '54 Code.)

Alfred A. Gentile, 65 T.C. 1, Acq. 1980–2 C.B. 2.

120.63 Geological research. An individual performing geological engineering and special geogogical research for clients is self-employed and income derived from such services should be considered in computing net earnings from self-employment. (Sec. 1402, '54 Code.)

Rev. Rul. 56–132, 1956–1 C.B. 475.

120.64 Golf professional. A golf professional who sells lessons and equipment on the premises of a golf club and fixes prices, makes appointments, and carries on his activities without orders or instructions from club members or officials is engaged in a trade or business and the income therefrom must be considered in computing net earnings from self-employment. S.S.T. 238 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–625, 1968–2 C.B. 465.

120.65 Gravediggers. An individual engaged in digging graves, under an arrangement with the operator of a funeral establishment who does not give instructions other than those received from the family of the deceased, supervise except to see that such instructions are carried out, furnish equipment, pay the individual's fee except as an accommodation to the deceased's family, or derive benefit other than goodwill from making the service available, is not an employee of the operator but is engaged in a trade or business. Rev. Rul. 54–368 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–219, 1974–1 C.B. 295.

120.66 Hatchery operator. Services performed in the operation of a chicken hatchery on non-farm property do not constitute agricultural labor and income derived from such enterprise must be taken into consideration in computing self-employment income. §§39.481–1, 408.208. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–311, 1954–2 C.B. 266.

120.67 Husband-wife partnership; not recognized by State law. A wife may realize net earnings from self-employment from a husband and wife partnership of which she is a member despite the fact that State law does not recognize the partnership as valid. §§39.481–1, 39.3797–1, 39.3797–4. (Secs. 481, 3797, '39 Code; Secs. 1402, 7701, '54 Code.)

Rev. Rul. 54–75, 1954–1 C.B. 169.

120.68 Illegal activities. An individual incurs liability for self-employment tax when he engages in a trade or business. The illegal nature of the activity is immaterial in determining whether the individual pursuing such activity is engaged in a trade or business with respect thereto. §1.1402(c)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 60–77, 1960–1 C.B. 386.

120.69 Income from subdivision of real estate. Income derived by an individual from the sale of real estate originally purchased as unimproved land and subsequently divided into lots and turned over to a real estate firm to sell constitutes income from a trade or business and should be included in computing net earnings from self-

employment. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code)

Rev. Rul. 55–49, 1955–1 C.B. 431.

120.70 Incompetent. Income derived from a mentally incompetent husband's business while it is being managed by his wife, before the appointment of a legal guardian, is self-employment income to the husband: however, income derived from the business after he was adjudged mentally incompetent is not self-employment income. Modified to provide that such income after he was adjudged incompetent is self-employment income. (Sec. 1402, '54 Code.)

Rev. Rul. 56–22, 1956–1 C.B. 558; Rev. Rul. 58–267, 1958–1 C.B. 327.

120.71 Indians; allotted and restricted lands. Income directly derived from allotted and restricted Indian lands held by the U.S. as trustee under the General Allotment Act of 1887 is tax-exempt. Such exempt income includes rentals, royalties, proceeds of sales of the natural resources of such land, and income from the sale of crops grown upon the land and from the use of the land for grazing purposes. Such income is not includible in computing net earnings from self-employment. Amplified by Rev. Rul. 62–16. §1.1402(a)–1. (Sec. 22(a), '39 Code; Secs. 61, 1402, '54 Code.)

Rev. Rul. 56–342, 1956–2 C.B. 20.

120.72 Indians; unallotted lands. Where there is no exemption provision in a treaty or agreement with the Indian tribe concerned or in some Act of Congress, income directly derived by a member of an Indian tribe from unallotted Indian tribal lands cultivated by him under an arrangement with the tribe is includible in the gross income of the recipient. If such income is derived from the taxpayer's trade or business and if it is not within the exclusions specified in section 1402(a) of the SECA, it is includible in computing his net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 58–320, 1958–1 C.B. 24.

120.73 Insurance salesmen; full-time; commissions. Commissions received after 1950 by a full-time life insurance salesman with respect to policies sold prior to 1951 (when he was not an employee) constitute income from self-employment; however, commissions on policies sold after 1950 constitutes wages. Distinguished by Rev. Rul. 58–177; clarified by Rev. Rul. 59–103. §§39.481–2, 408.204, 408.226. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–312, 1954–2 C.B. 327.

120.74 Insurance salesmen; life, accident and health insurance. An insurance salesman who, under the applicable common law rules, does not have the status of an employee, and who sells both life and accident and health insurance policies for one company, but primarily sells accident and health insurance, is not a "full time life insurance salesman" and consequently not an employee for FICA purposes. The individual is engaged in a trade or business for self-employment tax purposes. Rev. Rul. 54–312 clarified. §§1.1402(c)–1, 31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 59–103, 1959–1 C.B. 259.

120.75 Insurance salesmen; part-time. Commissions (deferred or renewal) received by a part-time life insurance salesman, who does not qualify as an employee under the employment tax rules for determining employer-employee relationships, constitute earnings from self-employment.

§§39.481–1, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–309, 1954–2 C.B. 261.

120.76 Insurance agents also corporate officers. Officers of an insurance company who sell insurance policies aside from and independent of their duties as officers, are, in effect, serving the company in two different and distinct capacities. They are employees with respect to duties performed as officers of the company. They are not employees with respect to services performed in selling insurance and the remuneration received for such services must be considered in computing net earnings from self-employment. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(a)–1. (Secs. 1401, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–505, 1958–2 C.B. 728.

120.77 International organization; concurrent civil service coverage. Services performed in the U.S. by a U.S. citizen in the employ of an international organization are included in the term "trade or business", and salary for such services is included in net earnings from self-employment, even though he is covered concurrently by the Civil Service Retirement Act. §§1.1402(c)–3, 31.3121(b)(15)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 66–69, 1966–1 C.B. 204.

120.78 International organization; services within and without U.S. A U.S. citizen employed by an international organization should compute his net earnings from self-employment when, during a taxable year, he works both within and without the U.S. In computing the amount of such salary constituting net earnings from self-employment attributable to services performed in the U.S., his salary is to be proportioned on the basis of the number of days spent in pay status within and without the U.S., respectively, the days of arrival in and departure from the U.S. to be counted as days in payment status in the U.S. §1.1402(c)–3. (Sec. 1402, '54 Code.)

Rev. Rul. 67–153, 1967–1 C.B. 221.

120.79 International organization; services within U.S.; income tax reimbursements to employees. Income tax reimbursements (including self-employment tax reimbursements) received by a United States citizen from an international organization in the years following the individual's termination of employment in the United States are subject to self-employment taxes. §§1.1401–1, 1.1402(a)–1, 1.1402(b)–1, 1.1402(c)–3, 31.3121(b)(15)–1. Secs. 1401, 1402, 3121; '54 Code.)

Rev. Rul. 84–122, 1984–33 I.R.B. 6.

120.80 Interviewers. Individuals conducting surveys of response to a corporation's advertising that is interested only in the result of the survey are not, under the circumstances, employees of the corporation; each is engaged in a trade or business. §§1.1402(c)–1, 31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 65–188, 1965–2 C.B. 390.

120.81 Inventors; transfer of patent. Payments received by an inventor from the transfer of his patent, a capital asset, are not to be included in computing his net earnings from self-employment. §1.1402(a)–6. (Sec. 1402, '54 Code.)

Rev. Rul. 68–129, 1968–1 C.B. 389.

120.82 Inventory loss; disaster area; amended prior year return. A self-employed taxpaye: who sustains a casualty loss to inventory in a disaster area may elect, under section 165(h), to deduct the loss for the preceeding taxable year and, if the election is made, must adjust the opening inventory for the year in which the loss occurred. §1.1402(a)–1. (Secs. 165, 471, 1402; '54 Code.)

Rev. Rul. 77–94, 1977–1 C.B. 265.

120.83 Limitation period; assessments. The filing of a Form 1040 fully reporting income but not reporting any self-employment tax starts the running of the period of limitation for assessment of the self-employment tax. Rev. Rul. 79–39 distinguished. §§1.1401–1, 301.6501(c)–1. (Secs. 1401, 6017, 6501; '54 Code.)

Rev. Rul. 82–185, 1982–2 C.B. 395.

120.84 Management services; laundry. An individual who operates a cash and carry laundry and dry cleaning agency under an agreement with a laundry firm, works without supervision on a straight commission basis, determines his own hours and routine, engages his own help, and pays all of his expenses, is not an employee of the laundry firm. Such individual is engaged in a trade or business and income derived therefrom is considered in computing net earnings from self-employment. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–15, 1956–1 C.B. 451.

120.85 Manager of bean station for canning company. A person is self-employed, and not an employee, where he agrees to perform certain services as manager of a bean station for a corporation that does not preclude his engaging in other occupations, does not require him to perform services personally and pays him on a poundage or production basis. §§39.481–1, 408.204, 408.208. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–573, 1954–2 C.B. 342.

120.86 Manager-beneficiary of trust property. Where, under the terms of a trust agreement, the beneficiaries have the sole right to operate the trust property held by a trust company as trustee for their joint profit, such operation results in the creation of a joint venture or partnership with the beneficiaries as members thereof. Payments made to one of the beneficiaries for supervising the trust property and his distributive share of the profits from the rental of the property constitute rentals from real estate and are excluded in computing net earnings from self-employment. §§1.1402(a)–4, 301.7701–3. (Secs. 1402, 7701; '54 Code.)

Rev. Rul. 64–220, 1964–2 C.B. 335.

120.87 Manicurist in barber shop. A manicurist performing services in a barber shop who, under an agreement with the barber shop operator, is free to refuse service to any patron, regulates her working hours, furnishes her own equipment and supplies, collects and retains the proceeds from her work, and may terminate the arrangement whenever it is no longer satisfactory, is not an employee of the operator but is engaged in a trade or business for self-employment tax purposes. Rev. Rul. 54–99 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–575, 1973–2 C.B. 335.

120.88 Mineral lease coowner; joint operating agreement. Income derived from participation as a coowner of a mineral lease is includible in net earnings from self-employment where the interest therein is acquired pursuant to a joint operating agreement providing for (1) payment by the coowner of his share of operating expenses, (2) delegation of authority to an agent to manage the properties, and (3) revocable authority of the agent to dispose of the coowner's share of the production. §1.1402(a)–1. (Secs. 761, 1402; '54 Code.)

Rev. Rul. 58–166, 1958–1 C.B. 324.

120.89 Ministers; annuity purchased by church. "Employer contributions" of a church to an annuity plan are not taken into account in determining a minister's net earnings from self-employment to the extent that such amounts are excludable from his gross income. Distinguished by

Rev. Rul. 78–6. §§1.1402(a)–2, 1.1402(a)–11. (Secs. 403, 1402; '54 Code.)

Rev. Rul. 68–395, 1968–2 C.B. 375.

120.90 Ministers; contributions to individual retirement accounts. In determining a minister's net earnings from self-employment under section 1402 of the Code, contributions to an individual retirement account established by the minister, whose church does not have a qualified retirement plan for its employees, are neither excludable from gross income nor deductible as a trade or business expense. Rev. Rul. 68–395 distinguished. §1.1402(a)–2. (Secs. 408, 1402; '54 Code.)

Rev. Rul. 78–6, 1978–1 C.B. 273.

120.91 Ministers; executive services for federation of churches. A federation of churches is a religious organization and executive services performed therefor by a minister are excepted from employment. He may elect self-employment coverage of such services and, if he does so elect, any income derived therefrom must be taken into consideration in computing self-employment income. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–187, 1956–1 C.B. 483.

120.92 Ministers; exemption. A minister who in 1973 and 1974 had net earnings from self-employment of $400 or more, some of which was from the performance of ministerial services, and during 1976 filed Form 4361 applying for exemption from the self-employment tax is not entitled to exemption. §1.1402(e)–2A. (Sec. 1402, '54 Code.)

Rev. Rul. 77–87, 1977–1 C.B. 265.

120.93 Ministers; faculty members of church-related college. Services performed by ordained ministers as faculty members of a church-related college and whose duties do not include the conduct of religious worship or the ministration of sacerdotal functions, are excepted from employment. Remuneration for the service is excepted from income tax withholding, but is subject to self-employment tax, effective January 1, 1971. Rev. Rul. 55–243 modified. §§1.1402(c)–5, 31.3121(b)(8)–1, 31.3401(a)(9)–1, 301.7805–1. (Secs. 1402, 3121, 3401, 7805; '54 Code.)

Rev. Rul. 71–7, 1971–1 C.B. 282.

120.94 Ministers; former lay employee. A lay employee of a church organization, who becomes an ordained minister, must comply with the self-employment tax waiver procedure for ministers in order to continue his social security coverage, even though his duties are not changed. §§1.1402(e)–1, 31.3121(k)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–588, 1956–2 C.B. 566.

120.95 Ministers; hospital chaplains. Rules for determining whether a minister serving as a hospital chaplain at church-related hospitals and health and welfare institutions, non-church-related private nonprofit hospitals, and government hospitals is performing services in the exercise of his ministry for purposes of the FICA, income tax withholding, and self-employment tax. Distinguished by Rev. Rul. 71–337. §§1.1402(c)–5, 31.3121(b)(6)–1, 31.3121(b)(7)–1, 31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 71–258, 1971–1 C.B. 283.

120.96 Ministers; pension payments or retirement allowances. Pension payments or retirement allowances received by a retired minister of a church with respect to services performed in the exercise of his ministry do not constitute net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 58–359, 1958–2 C.B. 422.

120.97 Ministers; religious corporation's income. No part of the income distributed or accruing to members of a tax-exempt religious or apostolic corporation is includible in the computation of the member's net earnings from self-employment, because section 501(d) requires the member to treat it as a dividend received. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 58–328, 1958–1 C.B. 327.

120.98 Ministers; rental value of parsonage. An ordained minister who elects social security coverage with respect to services which he performs in the exercise of his ministry should exclude from his net earnings from self-employment for a taxable year ending after 1954 the value of a home furnished as part of his compensation or the rental allowance paid to him. (Secs. 107, 1402; '54 Code.)

Rev. Rul. 56–85, 1956–1 C.B. 433.

120.99 Ministers; retired Armed Forces chaplain. A clergyman performing ministerial duties and retired from military service as a chaplain who expects to receive military retirement pay may qualify for exemption from self-employment tax with regard to his present earnings as a clergyman. §1.1402(c)–5. (Sec. 1402, '54 Code.)

Rev. Rul. 74–609, 1974–2 C.B. 276.

120.100 Ministers; taxes paid by church. Amounts paid by a church toward its minister's personal tax obligations are includible in his gross income for income and self-employment tax purposes; further, voluntary plans for withholding income tax from a minister's salary cannot be approved by the Revenue Service. §§1.1401–1, 31.3402(a)–1. (Secs. 1401, 3402; '54 Code.)

Rev. Rul. 68–507, 1968–2 C.B. 485.

120.101 Ministers; teacher-ministers in parochial schools. Male graduates of theological colleges who serve as ministers of religion and teachers in church parochial schools are ordained ministers for self-employment tax purposes; however, female graduates serving as teachers of religion are not considered to be ordained ministers. Accordingly, such male teachers may elect coverage under Title II of the Social Security Act as self-employed persons. The employee services performed by the women teachers may be covered under the waiver procedure provided in section 3121(k) of the Code. §1.1402(c)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 57–107, 1957–1 C.B. 277.

120.102 Ministers; teacher or administrator of college. The rental allowance of an ordained minister or any other minister serving on the faculty as a teacher or administrator at a college which is, in practice, operated as an integral agency of a church is excludable from gross income. Such ministers are, however, subject to self-employment tax on remuneration paid by the college but will not be required to report such remuneration as net earnings from self-employment for any taxable year beginning before January 1, 1971. Moreover, their services are excepted from employment for FICA purposes and withholding under the FICA is not applicable to remuneration paid by the college after December 31, 1970. §§1.1402(c)–5, 31.3121(b)(8)–1, 301.7805–1. (Secs. 1402, 3121, 7805; '54 Code.)

Rev. Rul. 70–549, 1970–2 C.B. 16.

120.103 Ministers; unreimbursed expenses. Unreimbursed business expenses (other than travel or transportation expenses) incurred by a duly ordained minister who is an employee of a church and who is subject to self-employment tax are not deductible from gross income in arriving at adjusted gross income. The unreimbursed expenses are deductible in computing the minister's self-employment tax. §1.1402(a)–2. (Secs. 62, 1402; '54 Code.)

Rev. Rul. 80–110, 1980–1 C.B. 190.

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120.104 Ministers; voluntary coverage. A duly ordained minister of a church who is required to take an oath of poverty to meet the requirements in a monastic order but, because of an appointment to a position outside the monastery which is not subject to monastic jurisdiction, is released from his oath of poverty by such order, may qualify for voluntary self-employment coverage. Any remuneration received for the performance of services will be includible in computing net earnings from self-employment. §1.1402(e)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 58–229, 1958–1 C.B. 331.

120.105 Missionaries; foreign; corporate headquarters in U.S. Answers to questions concerning the status of foreign missionaries who are not citizens of the U.S. but who are associated with a religious denomination which has its corporate headquarters in the U.S. §1.1402(c)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 62–200, 1962–2 C.B. 211.

120.106 Missionaries; remuneration erroneously reported; validation. Procedures are set forth to be followed by lay missionaries and others so that the remuneration they erroneously reported as earnings from self-employment and on which they paid tax may be deemed to be net earnings from self-employment. (Sec. 601.401, S.P.R.; Sec. 1402, '54 Code.)

Rev. Proc. 61–19, 1961–2 C.B. 551.

120.107 Mitigation of effect of limitation period; related employee FICA tax. The applicability of the mitigation provisions is explained in situations in which wages were erroneously reported as self-employment income or self-employment income was erroneously reported as wages and correction of the effect of the error as to the self-employment tax and/or the employee FICA tax is permissible under other provisions of the Code. §§1.1401–1, 31.3101–1, 301.6521–1. (Secs. 1401, 3101, 6521; '54 Code.)

Rev. Rul. 78–127, 1978–1 C.B. 436.

120.108 New jobs, targeted jobs and WIN credits. The reduced wage and salary deduction required by section 280C must be used in computing net earnings from self-employment by employers entitled to the new jobs and WIN credits and by employers who elect the targeted jobs credit. §1.1402(a)–1. (Secs. 40, 44B, 280C, 1402; '54 Code.)

Rev. Rul. 79–396, 1979–2 C.B. 309.

120.109 Nurses; registered or licensed practical. Whether a nurse is self-employed or an employee depends upon the facts and circumstances of the case. Generally, licensed practical nurses and registered nurses engaged in private duty nursing are considered to be self-employed. However, such nurses, when on the regular staff of a hospital, clinic, nursing home, physician, etc., work for a salary and follow prescribed routines during fixed hours when not available for private duty nursing, are employees. Mim. 6658 superseded. §1.1402(c)–1. (Sec. 1402 '54 Code.)

Rev. Rul. 61–196, 1961–2 C.B. 155.

120.110 Office rentals. Income received by an individual, who is not a real estate dealer, from the rental of space in an office building, constitutes rentals from real estate and is excluded in computing net earnings from self-employment where no services are rendered to the occupants of the property. §39.481–1. (Sec. 481(a), '39 Code; Sec. 1402, '54 Code.)

Rev. Rul. 55–559, 1955–2 C.B. 315.

120.111 Orchestra leaders and members. Examples are set forth to update and restate the rules for determining the status of orchestra leaders and members under the current statute and regulations for employment and self-employment tax purposes. Mims. 6187 and 6284 superseded. Mims. 4651, 5638, S.S.T.s 47, 324 and 375 obsoleted. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–107, 1968–1 C.B. 427.

120.112 Overpayment; claim for refund. Form OAR–7000, Notice of Determination of Self-Employment Income, furnished by the Social Security Administration, is not considered a claim for refund of overpaid self-employment tax. A taxpayer should file a claim on Form 843 before the expiration of the statutory period of limitation. §301.6402–2. (Sec. 6402, '54 Code.)

Rev. Rul. 56–297 1956–1 C.B. 564.

120.113 Partner; additional first-year depreciation. The additional first-year depreciation allowance and other items of income and allowable deductions attributable to any trade or business carried on by a partnership which are required to be taken into account separately by each partner are to be used in computing each partner's net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 65–272, 1965–2 C.B. 217.

120.114 Partner; earnings; taxable year of death. The rule for computing the net earnings from self-employment of a partner whose taxable year ends because of his death is discussed and two examples illustrate the application of the rule. (Sec. 1402, '54 Code.)

Rev. Rul. 58–607, 1958–2 C.B. 420.

120.115 Partner; guaranteed payments. As provided in the partnership agreement, where guaranteed payments made to the managing partner result in a partnership loss which he shares, such payments are taxable to the recipient partner for income and self-employment tax purposes, to the extent that they exceed his distributive share of the partnership loss. (Secs. 707, 1402; '54 Code.)

Rev. Rul. 56–675, 1956–2 C.B. 459.

120.116 Partner; limited; distributive share of income. A calendar year limited partner's distributive share of partnership income for a partnership's fiscal year ended June 30, 1978 is excluded from net earnings from self-employment. §1.1402(a)–2. (Sec. 1402, '54 Code.)

Rev. Rul. 79–53, 1979–1 C.B. 286.

120.117 Partner; outside earnings. Remuneration for services performed by a member of a partnership as an employee of another organization constitutes wages paid to him, no part of which may be considered as gross income derived from a trade or business carried on by the partnership for purposes of computing net earnings from self-employment, even though the wages have been assigned to the partnership in accordance with a partnership agreement providing for pooling all income earned by all partners. §39.481–3. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)

Rev. Rul. 54–223, 1954–1 C.B. 174.

120.118 Partner; salary drawings. Salary drawings received by a member of a partnership as compensation for services rendered to the partnership are includible in computing net earnings from self-employment where, by agreement of the partners, such payments are not chargeable against the working member's capital account regardless of whether the partnership sustains an operating loss but are chargeable against the capital accounts of the remaining partners in the event of a partnership loss. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)

Rev. Rul. 55–30, 1955–1 C.B. 430.

120.119 Partnership; business passing to widow and children. Where a widow, without having herself appointed as administratrix, operates a business which had descended intestate to herself and her children, the operation qualifies as a partnership even though one of the children is inactive in the business. §§39.481–1, 39.3797–4. (Secs. 481, 3797, '39 Code; Secs. 1402, 7701, '54 Code.)

Rev. Rul. 54–613, 1954–2 C.B. 269.

120.120 Partnership; investment club; distributive share of income. A member's distributive share of income from an investment club partnership whose activities are limited to investment in, and collection of interest on, savings certificates for its members' accounts is not net earnings from self-employment. §§1.1402(a)–1, 1.1402(c)–1. (Secs. 162, 1402; '54 Code.)

Rev. Rul. 75–525, 1975–2 C.B. 350.

120.121 Partnership; nonmembers' pro rata income share. Individuals, not members of the partnership, who made contributions to a limited partner to provide partnership capital do not derive self-employment income as the result of receiving a pro rata portion of the limited partner's share of profits. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 72–73, 1972–1 C.B. 309.

120.122 Partnership; retirement plan; payments made in following year. Payments made by a partnership retirement plan to a retired partner from current partnership earnings are excepted from "net earnings from self-employment" for purposes of section 1402(a) even though receipt of part of the payments is deferred until shortly after the beginning of the following year. §§1.1402(a)–1, 1.1402(a)–17. (Secs. 736, 1402; '54 Code.)

Rev. Rul. 79–34, 1979–1 C.B. 285.

120.123 Partnership; river pilots' association. Amounts received by active and inactive river pilots from a river pilots' association, pursuant to an agreement whereby fees for services of active river pilot members are pooled and distributed among pilot members on a stated basis, constitute net earnings from self-employment. An unincorporated river pilots' association, formed to collect pilotage fees, pay expenses, and disburse the net earnings from pilotage fees to members, is a partnership. §§39.481–1, 39.3797–4. (Secs. 481, 3797, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–614, 1954–2 C.B. 271.

120.124 Physicians; engaged by railway company. Physicians serving as local surgeons for a railway company that pays them retainer fees but neither exercises nor has the right to exercise control over their activities are not employees of that company for purposes of the RRTA. They are engaged in a trade or business and the income derived therefrom should be considered in computing net earnings from self-employment. C.T. 18 superseded §§1.1402(c)–1, 31.3231(b)–1. (Secs. 1402, 3231; '54 Code.)

Rev. Rul. 69–390, 1969–2 C.B. 190.

120.125 Physicians; pathologists; hospital department director. Where a physician, serving as director of a hospital's department of pathology, receives for his services a percentage of the department's income, pays the remuneration of his associate or substitute, is permitted to engage in the private practice of medicine, and is not entitled to certain employee fringe benefits, the compensation he receives from the hospital for taxable years ending on or after December 31, 1965, is subject to the self-employment tax. Rev. Rul. 261 distinguished and Rev. Rul. 61–178 amplified. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 66–274, 1966–2 C.B. 446.

120.126 Poultry farm operator. Services performed in carrying on a poultry business, purchasing chicks, raising them to market size, selling eggs and chickens, etc. constitute agricultural labor performed in the operation of a farm and income derived therefrom is not self-employment income. §§39.481–1, 408.208. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–310, 1954–2 C.B. 264.

120.127 Private tutor and part-time school teacher. An individual engaged in the business of private tutoring is self-employed with respect to such activity; where she is engaged by a Board of Education as a substitute teacher, she is an employee of the Board of Education with respect to such services. §§39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 55–206, 1955–1 C.B. 485.

120.128 Public officers; air pollution hearing board members. Services performed as members of a hearing board of an air pollution control district established within a county pursuant to the laws of a state, constitute the performance of the functions of a public office and are excluded from the term trade or business. Compensation for such services is not includible in computing net earnings from self-employment. §1.1402(c)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 61–113, 1961–1 C.B. 400.

120.129 Public officers; tax collector. An individual elected to collect the county, township, and school district taxes within his electoral district, who accounts for and turns over all collections to the treasurer of each taxing authority, and is compensated from State funds on the basis of a fixed percentage of each tax, is not engaged in a trade or business and does not have net earnings from self-employment. §§1.401–10, 1.1402(a)–1. (Secs. 401, 1402; '54 Code.)

Rev. Rul. 74–608, 1974–2 C.B. 275.

120.130 Rancher; fees for hunting rights. A ranchman who, at considerable expense, turns his ranch into a hunting preserve and sells hunting rights thereon at a certain fee per day, week, or hunting season is engaged in a trade or business and such fees are includible in computing net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 57–235, 1957–1 C.B. 275.

120.131 Religious groups; election. Ministers, members of religious orders, and Christian Science Practitioners who filed Form 4361 claiming exemption from social security coverage solely for economic considerations have not made a valid election and are subject to self-employment tax for years after 1967. (Sec. 1402, '54 Code.)

Rev. Rul. 70–197, 1970–1 C.B. 181.

120.132 Religious groups; opposed to insurance; annuity purchased. A member of a religious sect opposed to acceptance of benefits of any private or public insurance who purchases a retirement annuity from an insurance company is not eligible for exemption from self-employment tax. §1.1402(h)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 77–88, 1977–1 C.B. 266.

120.133 Religious groups; opposed to public insurance only. A member of a religious group who is conscientiously opposed to receiving the benefits of public, but not private, insurance does not qualify for exemption from the self-employment tax. (Sec. 1402, '54 Code.)

Rev. Rul. 68–188, 1968–1 C.B. 387.

120.134 Religious groups; untimely application for exemption. An application for exemption from self-employment tax under section 1402(h) of the SECA, filed in 1971 by a member of a qualified religious sect, who was self-employed and paid the tax in years prior to 1965 when that section was enacted and who was an employee during 1965 and subsequent years until 1971 when he again became self-employed, was not filed within the time required by section 1402(h)(2) and the individual is not exempt from self-employment tax.

§1.1402(h)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 74–460, 1974–2 C.B. 277.

120.135 Rental income; beach dwellings with services. Income derived by an individual, who is not a real estate dealer, from the rental of furnished beach dwellings where, in addition to rendering the usual necessary services with respect to the property, he also performs many personal services for the comfort and convenience of his guests in connection with their recreational activities, does not constitute excluded rentals from real estate for self-employment tax purposes. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 57–108, 1957–1 C.B. 273.

120.136 Rental income; filling station operator; gallonage payments. Where an owner-operator of a filling station leases his station to a gasoline distributing company for a consideration of a monthly rent plus a certain amount for each gallon of gasoline sold by the company to the operator, the gallonage payments constitute rental from real estate for self-employment tax purposes. Distinguished by Rev. Rul. 64–64. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 60–112, 1960–1 C.B. 354.

120.137 Rental income; space and services for coin-operated amusement machines. The remuneration received by an occupant of business premises who provides space for coin-operated amusement machines, supervises play, makes change, and pays out prizes for a percentage of the receipts, does not constitute rentals from real estate for self-employment tax purposes. Rev. Rul. 57–7 amplified; Rev. Rul. 60–112 distinguished. §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 64–64, 1964–1 (Part 1) C.B. 320.

120.138 Rentals; crop shares. Where crop shares received as rent by a landowner are excluded from net earnings from self-employment as rentals from real estate, such shares, when reduced to cash or its equivalent, will constitute rents for the purpose of computing retirement income credit. However, when the shares received are fed to his livestock, the value of the crop shares does not represent rental income either for the purpose of the retirement income credit or for self-employment tax purposes. Modified by Rev. Rul. 58–257. (Secs. 37, 61, 1402; '54 Code.)
Rev. Rul. 56–357, 1956–2 C.B. 14; Rev. Rul. 56–496, 1956–2 C.B. 17.

120.139 Rentals; crop shares. Rental income paid in crop shares does not lose its identity as such for purposes of the retirement income credit even though it may constitute earnings from self-employment. Where there is a landlord-tenant arrangement and the landlord materially participates in the production of or management of crops, the 30-percent rule contained in section 911(b) should be considered in computing retirement income. Rev. Ruls. 56–357 and 56–496 modified. §1.1402(a)–1. (Secs. 37, 1402; '54 Code.)
Rev. Rul. 58–257, 1958–1 C.B. 9.

120.140 Research grant; independent study. Amounts awarded by a science foundation to an individual to cover salary, equipment, and assistance, for the purpose of conducting independent research free from control and supervision by the grantor, are includible in determining net earnings from self-employment. Distinguished by Rev. Rul. 60–130 with respect to cancer research grants. (Sec. 1402, '54 Code.)
Rev. Rul. 57–127, 1957–1 C.B. 275.

120.141 Salespersons; automobile club. An individual engaged by an automobile club to distribute automobile license plates and to sell club memberships who maintains and operates his own office, engages and pays his own assistants, bears all expenses incurred in connection with his activities for the club, and receives a fixed fee for each license plate issued and a commission on each club membership sold is not an employee of the club but is engaged in a trade or business, the income from which is includible in computing net earnings from self-employment. §§1.1402(c)–1, 31.3121(d)–1. (Secs. 1402, 3121; '54 Code.)
Rev. Rul. 62–79, 1962–1 C.B. 184.

120.142 Salespersons; vacuum cleaners. A dealer who enters into a nonexclusive contract, terminable at any time, with a distributor to sell the distributor's vacuum cleaners and devices in customers' homes, pays cash for the products or assigns acceptable customer contracts, determines his own hours and territory, may use the distributor's office space or work from home, pays all his selling expenses, furnishes his own transportation, is not required to attend meetings or submit reports, is compensated on a commission basis with no guarantee, is furnished with some leads, and has no employee benefits but may receive incentive bonuses, is not an employee but is in a trade or business. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401, 6015, 6017; '54 Code.)
Rev. Rul. 75–229, 1975–1 C.B. 320.

120.143 Salespersons; yachts and ships. Salespersons engaged by a company to sell yachts and ships listed with it, who agree to perform their services personally, are free to solicit prospective buyers and listings at their own discretion, are not restricted to a specific territory, are not required to work any regular hours or at any specified time, are not required to attend scheduled sales meetings, are paid on a commission basis and who pay all of their own expenses are not employees of the company but are engaged in a trade or business. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 74–389, 1974–2 C.B. 330.

120.144 School bus service; independent contractor. An individual who contracts to furnish school bus service to a county school district is an independent contractor and the assistants he hires to drive the buses are his employees. Amounts received by the contractor must be considered in computing his net earnings from self-employment. Em. T. 442 superseded. §§1.1402(c)–1, 31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 1402, 3121, 3306, 3402; '54 Code.)
Rev. Rul. 72–175, 1972–1 C.B. 316.

120.145 Scientific consultants abroad. Income derived from sources without the U.S. by an American citizen engaged in a trade or business as a scientific consultant is includible in computing net earnings from self-employment subject to section 911. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 55–172, 1955–1 C.B. 98.

120.146 Scholarship and fellowship grants. Scholarship or fellowship grants, received by recipients who are not candidates for degrees, are not wages subject to self-employment tax, FICA, FUTA, or income tax withholding, even through the recipients must include in gross income amounts in excess of the limitations prescribed in section 117(b)(2)(B). §1.1402(a)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 60–378, 1960–2 C.B. 38.

120.147 Seamstresses; services in clients' homes. Amounts paid a seamstress for services performed for an established customer clientele constitute earnings from self-employment, where the services are performed in the private homes of the customers, the seamstress furnishes the equipment required to do the work, and she determines the fee to be charged. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 54–112, 1954–1 C.B. 170.

120.148 Sharecroppers. When a farmer agrees to have his land worked by others for a share of the crop, the sharecroppers are self-employed and their share is included in determining their net earnings from self-employment; the farmer's shares are rentals from real estate and excluded from net earning from self-employment. However, if the sharecroppers do some work for the farmer for a daily or hourly wage, subject to his direction and control, they are employees for purposes of the FICA. (Secs. 1402, 3121; '54 Code.)
Rev. Rul. 55–538, 1955–2 C.B. 313.

120.149 Share-farming arrangements. Income derived by a landowner under a share-farming or other rental arrangement should be included in computing net earnings from self-employment if the landowner materially participated in production. The landowner participates to a material degree when he periodically consults with the other party on production, periodically inspects production activities, and furnishes a substantial portion of the farm machinery or advances funds or assumes financial responsibility for a substantial portion of the expense, other than labor. (Sec. 1402, '54 Code.)
Rev. Rul. 57–58, 1957–1 C.B. 270.

120.150 Shoeshine stand; barber shop porter. An individual serving as a porter in a barber shop for the privilege of operating a shoeshine stand in the shop is self-employed with respect to the operation of the stand; the fair rental value of the stand is treated as wages for porter services for self-employment tax purposes and is reportable as wages under the FICA. (Secs. 1402, 3121; '54 Code.)
Rev. Rul. 56–66, 1956–1 C.B. 432.

120.151 Short taxable year; computation of tax. Where a Federal income tax return is filed for a period of less than 12 months because of a change in accounting period, the self-employment tax is computed on the actual self-employment income for the short period. §§29.47–2, 29.481–2. (Secs. 47(c), 481, '39 Code; Sec. 1402, '54 Code.)
Rev. Rul. 94, 1953–1 C.B. 84.

120.152 Sideline activities; loans made and serviced; interest. A sideline activity of making and servicing loans engaged in by an individual, which is separate and apart from his regular employment as a city government employee, constitutes a trade or business for self-employment tax purposes, and amounts received as interest on such loans are includible in computing net earnings from self-employment. §1.1402(c)–1. (Sec. 1402, '54 Code.)
Rev. Rul. 58–195, 1958–1 C.B. 329.

120.153 Sideline activities; professors. Royalties and other income received by an individual from writing books and giving lectures, sideline activities entirely apart from his employment as a State university professor, are includible

in computing net earnings from self-employment. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)

Rev. Rul. 55–385, 1955–1 C.B. 100.

120.154 Social Security contribution and benefit base. The Secretary Department of Health, Education, and Welfare, has announced the Social Security contributions and benefit base for taxable years beginning in 1976.

1975–2 C.B. 597.

120.155 Social Security Contribution and Benefit Base. The Secretary of Health, Education, and Welfare Secretary of Health and Human Services has announced the contribution and benefit base for remuneration paid in and for the taxable years as indicated:

1977, $16,500, 1976–2 C.B. 673;
1978, $17,700, 1977–2 C.B. 580;
1979, $22,900, 1978–2 C.B. 542;
1980, $25,900, 1979–2 C.B. 601;
1981, $29,700, 1980–2 C.B. 587;
1983, $35,700, 1982–2 C.B. 866;
1984, $37,800, 1983–2 C.B. 618;
1985, $39,600, 1984–53 I.R.B. 23.
1986, $43,800, 1986–49 I.R.B. 23.

120.156 Social Security contribution and benefit base; pre-1977 law. The Secretary of Health, Education, and Welfare has announced that the contribution and benefit base for 1980 that would have been in effect under pre-1977 law is $20,400. This "old-law" base is used for certain RRTA and ERISA purposes and for computing special minimum benefits for workers with many years of low earnings.

1980–1 C.B. 699.

120.157 Sole proprietorship. The income from a business operated as a sole proprietorship must be reduced by allowable business expenses, both for income tax purposes and for purposes of the tax on self-employment income, and an agreement between the taxpayer and his wife that she pay the expenses for him will be ineffective to prevent this reduction. §1.1402(a)–1. (Secs. 63, 1402; '54 Code.)

Rev. Rul. 57–538, 1957–2 C.B. 55.

120.158 Speakers; Member of Congress. Amounts received for speaking engagements by a Member of Congress who regularly in such activites are includible in net earnings from self-employment. Rev. Rul. 55–431 amplified. §§1.1402(a)–1, 1.1402(c)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 77–356, 1977–2 C.B. 317.

120.159 Speakers; occasional lectures. An occasional speaking engagement for which an honorarium is received does not constitute a trade or business for computing self-employment earnings, as would be the case of lectures by one who seeks, or otherwise indicates his availability for, regular speaking engagements for a fee. Amplified by Rev. Rul. 77–356. §39.481–1. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)

Rev. Rul. 55–431, 1955–2 C.B. 312.

120.160 Supervisory committee of credit union. Members of the supervisory committee of a credit union are engaged in a trade or business in performing their supervisory duties for self-employment tax purposes. §1.1402(c)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 57–91, 1957–1 C.B. 326.

120.161 Surviving spouse; period prior to husband's death. A surviving spouse, who takes over a business as the owner thereof upon the death of her husband, may not include the earnings of the business for the period prior to his death in computing her net earnings for that year even though she files a joint return with respect to both herself and the decedent. §1.1402–1. (Secs. 1402, 6017; '54 Code.)

Rev. Rul. 59–168, 1959–1 C.B. 625.

120.162 Surviving spouse; renewal insurance commissions. Renewal commissions paid a surviving widow, pursuant to a contract entered into by the husband as a self-employed agent for an insurance company, do not constitute self-employment income for the widow. The renewal commissions are includible in the income of the widow for income tax purposes. §1.1402(a)–1. (Secs. 691, 1402; '54 Code.)

Rev. Rul. 59–162, 1959–1 C.B. 224.

120.163 Taxicab drivers; cabs purchased from taxi association. Taxicab drivers operating vehicles purchased from a taxicab association under conditional sales agreements requiring specified daily payments but giving the association no right to control their operations are not employees of the association. However, earnings therefrom should be considered for purposes of self-employment tax. S.S.T. 241 superseded. §§1.1402(a)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–571, 1971–2 C.B. 347.

120.164 Taxicab drivers; leasing cabs. Taxicab drivers who lease their vehicles from a taxicab company in return for a percentage of the fares that they collect are employees of the company. Owners and drivers who lease the services of the company and in the case of nonowner drivers, the vehicles as well, for a fixed amount at regular intervals are not employees of the company. Their earnings, however, should be considered for purposes of self-employment tax. Mim. 6652 and Rev. Rul. 66–267 superseded. §§1.1402(a)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–572, 1971–2 C.B. 347.

120.165 Telephone directory distributors. An individual engaged by a delivery-service corporation for three or four days in a year to deliver new and pick up old telephone directories, paid on a piece-work basis, using his own means, manner, and methods, and paying his own expenses which may include payments to assistants he hires, is not an employee of the corporation but is engaged in a trade or business. Rev. Rul. 54–459 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–220, 1974–1 C.B. 290.

120.166 Telephone service for auto dealers. An individual who maintains in his home a listing of the daily car inventory of each automobile dealer in the area and furnishes such information by telephone to the salesmen of the participating dealers is not an employee of the dealers for FICA purposes, but is subject to self-employment tax. §§39.481–1, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 55–113, 1955–1 C.B. 481.

120.167 Telephone solicitors. An individual who is engaged by a company to solicit orders by telephone from designated individuals and institutions, who is furnished office facilities on the company premises, is expected to work four to eight hours daily, and is paid a commission on each sale, is an employee of the company; however, an individual who is engaged by the company to telephone householders listed in certain pages of the telephone directory to solicit orders, operates from home without supervision, pays all expenses in connection with the activity, is not required to work a certain number of hours, and is paid on a commission basis, is not an employee of the company but is engaged in a trade or business. Rev. Rul. 55–279 superseded. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–333, 1974–2 C.B. 328.

120.168 Telephone solicitors. Individuals engaged and trained by a correspondence school to solicit students from a supplied list during specified hours by telephone from their own homes exclusively for and in the name of the school, who are furnished all necessary forms and stationery, are required to complete daily reports, supply and maintain their own telephones, and are paid on an hourly basis are employees for purposes of the FICA, FUTA, and income tax withholding. Rev. Rul. 74–333 distinguished. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–242, 1975–1 C.B. 321.

120.169 Trailer park owners. Owners of a mobile home park provide various services for their tenants as required by California law, including sewerage, vacant home maintenance of their own units, trash collection, and ground maintenance. Payments received from the tenants are "rentals from real estate" for purposes of section 1402. Provision and maintenance of laundry facilities through an independent concessionaire are considered too insubstantial to make the owners subject to self-employment tax. Rev. Rul. 72–331 obsoleted. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Fabian Bobo, 10 T.C. 707, Acq., 1983–2 C.B. 1; Rev. Rul. 83–139, 1983–2 C.B. 150.

120.170 Tutor for Federal agency. An individual engaged by a Federal agency to perform services for it as a foreign language teacher and tutor under a contract is not an employee with respect to such services, but is engaged in a trade or business for self-employment tax purposes. §1.1402(c)–1. (Secs. 1402, 3122; '54 Code.)

Rev. Rul. 56–615, 1956–2 C.B. 565.

120.171 Unordained religious worker. Unordained members of a religious denomination which provides for ordination of ministers, commissioned by a church or related religious organization without investing them with the authority of ordained ministers, do not qualify as duly ordained, commissioned, or licensed ministers of a church for purposes of the FICA, SECA, and income tax withholding. Modified by Rev. Rul. 78–301. §§1.1402(a)–11, 31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 65–124, 1965–1 C.B. 60.

120.172 Variety act owner. The owner of a variety act that performs a series of short term engagements for a number of different establishments is engaged in a trade or business for self-employment tax purposes. S.S.T. 376 and Mim. 6715 superseded. §1.1402(c)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 68–428, 1968–2 C.B. 444.

120.173 Watch repairman; leased department in store. An individual conducting a watch repair business in a jewelry store, paying the jeweler a percentage of receipts as rent, furnishing all his own equipment, regulating his own working hours, fixing his own prices, and doing all repair work in accordance with his own methods, is self-employed and income derived from such activity should be considered in computing net earnings from self-employment. §39.481–3, 408.204. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 55–248, 1955–1 C.B. 117.

120.174 Well contractors completing wells for well boring company. Individuals who orally contract with a water well boring company operator to pack, grout, and seal operator-bored wells, providing all materials, tools, and equipment, establishing their own work schedules and routines, and reporting only the job comple-

tion to the operator are not the operator's employees but are engaged in a trade or business. Rev. Rul. 70–662 distinguished. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–15, 1975–1 C.B. 317.

120.175 Woodsmen; payment for use of tools. Amounts paid by a paper manufacturing company to its woodsmen employees for the use of chain saws owned and operated by such employees in cutting pulpwood for the company, less their operating expenses, is not self-employment income. §29.481–3. (Sec. 481, '39 Code; Sec. 1402, '54 Code.)

Rev. Rul. 111, 1953–1 C.B. 390.

120.176 Writer. Royalties received after December 31, 1950, by an individual from the trade or business of writing books from 1931 through 1966 are includible in computing net earnings from self-employment and must be considered in determining whether he has had self-employment income for each taxable year after 1950. §1.1402(b)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 68–498, 1968–2 C.B. 377.

120.177 Writers; resident alien. Royalties received by a resident alien author for books published while the author was a nonresident alien are includible in net earnings from self-employment. §1.1402(a)–1. (Sec. 1402, '54 Code.)

Rev. Rul. 79–390, 1979–2 C.B. 308.

Services not in course of employer's trade or business

(See: Casual labor)

Share farming

122.1 Earnings. When a farmer agrees to have his land worked by others for a share of the crop, the sharecroppers are self-employed and their share is included in determining their net earnings from self-employment; the farmer's shares are rentals from real estate and excluded from net earnings from self-employment. However, if the sharecroppers do some work for the farmer for a daily or hourly wage, subject to his direction and control, they are employees for purposes of the FICA. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 55–538, 1955–2 C.B. 313.

122.2 Migrant workers who only cultivate and pick a crop. The services of migrant workers who only cultivate and pick an agricultural crop are not excepted from "employment" as share farmers under section 3121(b)(16). §31.3121(b)(16)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 85–85, 1985–1 C.B. 332.

122.3 Pine tree streaking. Employees of a producer of crude gum turpentine who "streak" pine trees in order to induce the flow of crude gum resin into cups for gathering, work a certain number of trees for the season, and are paid according to the amount produced as a result of their work are not performing services under a share-farming arrangement and their services are not excepted from employment for purposes of the FICA. §31.3121(b)(16)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 75–474, 1975–2 C.B. 400.

122.4 Rental arrangement; self-employment tax. Income derived by a landowner under a share-farming or other rental arrangement should be included in computing net earnings from self-employment if the landowner materially participated in production. The landowner participates to a material degree when he periodically consults with the other party on production, periodically inspects production activities, and furnishes a substantial portion of the farm machinery or advances funds or assumes financial responsibility for a substantial portion of the expense, other than labor. (Sec. 1402, '54 Code.)

Rev. Rul. 57–58, 1957–1 C.B. 270.

122.5 Shares received; self-employment. Where crop shares received as rent by a landowner are excluded from net earnings from self-employment as rentals from real estate, such shares, when reduced to cash or its equivalent, will constitute rents for the purpose of computing retirement income credit. However, when the shares received are fed to his livestock, the value of the crop shares does not represent rental income either for the purpose of the retirement income credit or for self-employment tax purposes. Modified by Rev. Rul. 58–257. (Secs. 37, 61, 1402; '54 Code.)

Rev. Rul. 56–357, 1956–2 C.B. 14; Rev. Rul. 56–496, 1956–2 C.B. 17.

122.6 Shares received; self-employment Rental income paid in crop shares does not lose its identity as such for purposes of the retirement income credit even though it may constitute earnings from self-employment. Where there is a landlord-tenant arrangement and the landlord materially participates in the production of or management of crops, the 30–percent rule contained in section 911(b) should be considered in computing retirement income. Rev. Ruls. 56–357 and 56–496 modified. §1.1402(a)–1. (Secs. 37, 1402; '54 Code.)

Rev. Rul. 58–257, 1958–1 C.B. 9.

States

(See: Instrumentalities)

Statute of limitations

(See: Limitation period)

Students

124.1 Apprenticeship school; union; contractor's association. Preapprenticeship students attending a school established pursuant to an agreement between a local union and contractor's association to finance training of preapprentices and apprentices are not employees. Apprentice students are employees of the contractors to whom they are assigned while attending the school and payments made to them by the educational and training trust fund are wages; the employer-contractors incur liability for FICA and FUTA taxes at the time payments are made by the fund to the apprentices and the fund is required to withhold Federal income tax on such payments. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3504–1. (Secs. 3121, 3306, 3401, 3504; '54 Code.)

Rev. Rul 69–519, 1969–2 C.B. 185.

124.2 Domestic services; university women's club. Domestic services performed by university students for a university women's club whose membership consists of the faculty and administration members, employees of affiliated organizations, and family members of each group are not excepted from employment. S.S.T. 407 superseded. §§31.3121(b)(2)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–174, 1972–1 C.B. 315.

124.3 Employed by college; Economic Opportunity Act. Payments made by a college to student-employees who participate in a work-study program established under Title I-C of the Economic Opportunity Act of 1964, and to individuals who are employed full time by the college during the summer vacation period are compensation for services and are includible in gross income of the recipients and are subject to income tax withholding. Payments for services performed for the college are subject to the taxes imposed by the FICA only if the services of the employee are employment. §§31.3121(b)(8)–2, 31.3121(b)(10)–1, 31.3121(b)(10)–2, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 66–285, 1966–2 C.B. 455.

124.4 Employed by university; excepted services. Services performed by a graduate student registered for two courses totaling 6 hours of credit out of a maximum of 18 and employed full time by a university that has waived its exemption from FICA is not excepted from employment under section 3121(b)(10). However, the services of a graduate student employed 15 hours a week and registered for four courses totaling 12 credits, and the services of a graduate student employed 6 hours a week while working on a dissertation following completion of required course work and registered at the university for dissertation advisement, are excepted. §31.3121(b)(10)–2. (Sec. 3121, '54 Code.)

Rev. Rul. 78–17, 1978–1 C.B. 306.

124.5 Employed by university; summer study and research. Services performed by graduate students and research assistants who work for a university that has waived its exemption from FICA taxes and who use the summer vacation for independent study and research, and during that time are not enrolled or regularly attending classes, are not excepted from employment in each summer calendar quarter that they are paid $50 or more. §31.3121(b)(10)–2. (Sec. 3121, '54 Code.)

Rev. Rul. 74–109, 1974–1 C.B. 288.

124.6 Employed by university; summer vacation. Services performed for a university by a student during the summer vacation between two academic years while not enrolled or regularly attending classes are not excepted from employment for purposes of the FICA if he earns $50 or more in the calendar quarters of the summer vacation. S.S.T. 404 superseded. §31.3121(b)(10)–2. (Sec. 3121, '54 Code.)

Rev. Rul. 72–142, 1972–1 C.B. 317.

124.7 Foreign. A foreign student in the U.S. for the purpose of advanced training in nursing at a hospital for a period of at least two years, who as part of his training performs part-time services as an employee of the hospital and receives remuneration from the hospital for the services, will be classified as a nonresident alien and his services are excepted from employment for FICA and FUTA purposes. However, his remuneration is subject to income tax withholding; the student is treated as a resident alien under the provisions of Rev. Rul. 54–87, which is amplified to be made applicable to income tax withholding. §§31.3121(b)(19)–1, 31.3306(c)(18)–1, 31.3401(a)(6)–1, 31.3402(a)–1, 31.3402(f)(6)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 67–159, 1967–1 C.B. 280.

124.8 Internal Revenue Service Scholarship Program; withholding. The Internal Revenue Service Scholarship Program is a work-study program for internal revenue agent trainees that usually selects disadvantaged high school seniors who intend to major in accounting at a college or university and who agree to work for the Service for at least two years after graduation. The amounts the Service pays for the educational expenses of the participants in the program, including travel and per diem, are wages subject to in-

come tax withholding. §31.3402(a)–1. (Secs. 61, 117, 162, 3402; '54 Code.)

Rev. Rul. 76–230, 1976–1 C.B. 19.

124.9 Production workers. A manufacturing corporation, upon leasing a building from a college, agreed to employ only students as production workers. Selections and withdrawals of student workers are made by the college. The corporation trains the students, controls the quality and manner of performance of the work, and furnishes all equipment and materials. All remuneration due students for their services is paid by the corporation to the college, which credits it to the students' accounts with the college. *Held,* the students are employees of the manufacturing corporation. Distinguished by Rev. Rul. 64–54, §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–500, 1955–2 C.B. 398.

124.10 Registered nurse employed by hospital; student in specialized program. The services of a registered nurse who is employed full-time by a hospital are not excepted from employment for FICA and FUTA purposes even though the nurse is also enrolled and regularly attending classes in a specialized program at a nurses' training school. §§31.3121(b)(13)–1, 31.3306(c)(13)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 85–74, 1985–1 C.B. 331.

124.11 Required work program; withholding. Amounts received by students who, as a condition to receiving Bachelor of Science Degrees, are required to participate in a university designated work-term period under the supervision and direction of the employers for whom they perform services, are not excludable as scholarships or fellowship grants, but are includible in gross income as compensation for services rendered and are wages subject to income tax withholding. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 73–218, 1973–1 C.B. 53.

124.12 Summer music camp. Even though a camp which qualifies as a school, college, or university waives its exemption from tax under the FICA, services performed for it by its students who are enrolled and are regularly attending classes are excepted from employment and the camp is not liable for the taxes imposed by the Act with respect to the remuneration for such services. (Sec. 3121, '54 Code.)

Rev. Rul. 56–87, 1956–1 C.B. 463.

124.13 Trainees; payments from school of medical technology. Amounts paid by a school of medical technology to its student-trainees for weekend work outside its training program are wages subject to income tax withholding. However, stipends paid to the student-trainees, who are not required to perform significant services for the school as a condition to receive such stipend, are not subject to income tax withholding and are excludable from gross income as a scholarship or fellowship. §§31.3401(a)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 64–29, 1964–1 (Part 1) C.B. 79.

124.14 Trainees; private agency under State program. High school students who are placed in training and work programs with private agencies under the vocational educational plan of North Carolina are employees of the training agencies. S.S.T. 356 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–541, 1968–2 C.B. 456.

Suits

(See also: Criminal prosecutions)

126.1 Attorney-client privilege; communications, memoranda or notes. Communications by a corporation's officers and certain other employees to the corporation's counsel to enable the corporation to seek legal advice from counsel and memoranda or notes on interviews with these employees are protected from disclosure by the attorney-client privilege. §§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

Upjohn Co., 449 U.S., Ct. D. 2003, 1981–1 C.B. 591.

126.2 Declaratory and injunctive relief; unemployment funds; unaffiliated religious school employee. The Tax Injunction Act deprived the District Court of jurisdiction to issue declaratory and injunction relief as to whether certain state and federal statutes violate the Establishment and Free Exercise Clauses of the First Amendment by requiring religious schools unaffiliated with any church to pay unemployment insurance taxes. (Sec. 3309, '54 Code.)

California, 457 U.S., Ct. D. 2014, 1982–2 C.B. 230.

126.3 Evidence; illegally obtained by police. An assessment of wagering excise taxes, based in substantial part on evidence illegally obtained by city police, was not subject to exclusion under the Fourth Amendment; the exclusionary rule should not be extended to forbid the use in the civil proceeding of one sovereign of evidence seized by a criminal law enforcement agent of another sovereign.

Janis, 428 U.S. 433, Ct. D. 1980, 1976–2 C.B. 615.

126.4 Injunction and declaratory judgment; tax-exempt status. An action for declaratory judgment and injunctive relief, to enjoin the Service to reinstate a letter ruling that a nonprofit educational organization qualifies for tax-exempt status and that contributions to the organization will constitute charitable deductions, is barred by the prohibition in section 7421 against suits restraining the assessment or collection of any tax. (Sec. 7421, '54 Code.)

"Americans United" Inc., 416 U.S. 752, Ct. D. 1963, 1974–2 C.B. 401.

126.5 Injunction prohibiting assessment and collection. A court may not, prior to the assessment and collection of any tax, enjoin the Service from revoking a ruling letter declaring that an organization qualifies for tax-exempt status and from withdrawing advance assurance to donors that contributions to the organizations will constitute charitable deductions. (Sec. 7421, '54 Code.)

Bob Jones University, 416 U.S. 725, Ct. D. 1962, 1974–1 C.B. 354.

126.6 Injunction prohibiting assessment and collection; withholding. A court may not enjoin the Revenue Service from enforcing the withholding provisions of section 3402 of the Code against an employer, a religious corporation, that in response to the employees' request ceased withholding from the employees' salaries a percentage of the required withholding which the employees, who wish to bear witness to their religious beliefs, contend represents the percentage of the Federal budget allocated to military expenditures. §31.3402(a)–1. (Secs. 3402, 7421; '54 Code.)

American Friends Service Committee, 419 U.S. 7, Ct. D. 1968, 1975–1 C.B. 377.

126.7 Injunction prohibiting collection of taxes. A corporation alleging nonliability for social security and unemployment taxes could not maintain a suit enjoining collection of the taxes merely because it would suffer irreparable injury. Such a suit may be maintained only when it is clearly shown at the time of the suit the Government, under the most liberal view of the law and the facts, has no chance of ultimately prevailing. (Sec. 7421, '54 Code.)

Williams Packing and Navigation Co., 370 U.S. 1, Ct. D. 1874, 1962–2 C.B. 349.

126.8 Injunction prohibiting collection of taxes; jeopardy assessment. The Service must disclose the factual basis for a jeopardy assessment to a taxpayer who has filed suit for injunction against the collection of the tax and would suffer irreparable injury if the assessment were not restrained. (Sec. 7421, '54 Code.)

Shapiro, 424 U.S. 614, Ct. D. 1974, 1976–1 C.B. 399.

126.9 Interest rate. Examples are provided for the computation of the 9 percent interest rate on underpayments and overpayments of tax, effective on July 1, 1975, under the provisions of section 6621 of the Code as added by Pub. L. 93–625. §§301.6332–1, 301.6601–1, 301.6602–1, 301.6611–1, 301.7426–1. (Secs. 6332, 6601, 6602, 6611, 6621, 7426; '54 Code.)

Rev. Rul. 75–58, 1975–1 C.B. 374.

126.10 Intervention; judicial enforcement of summons; former employer's records. A taxpayer having no significantly protectible interest in a former employer's records has no right to intervene in a proceeding to enforce summonses issued to produce the records to aid an investigation before recommendation for criminal prosecution. §§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

Donaldson, f.k.a. Sweet, 400 U.S. 517, Ct. D. 1942, 1971–1 C.B. 416.

126.11 Judicial enforcement of summonses; examination of records. A District Court's finding that summonses issued by a special agent to a taxpayer's bank were "solely for the purpose of unearthing evidence of criminal conduct" was not sufficient to establish that the summonses were not issued in good faith under section 7602 and, therefore, not enforceable. §§301.7602–1, 301.7604–1. (Secs. 7602, 7604; '54 Code.)

LaSalle National Bank, 437 U.S. 298, Ct. D. 1994, 1978–2 C.B. 336.

126.12 Limitation period in refund proceedings. Where a claim for refund is disallowed by means other than a registered notice of disallowance mailed to the taxpayer, unless the taxpayer has filed a written waiver of the requirement that he be mailed such registered notice of disallowance, an agreement to suspend the running of the statute of limitations for purposes of a suit based on the claim is not necessary. §301.6532–1. (Sec. 6532, '54 Code.)

Rev. Rul. 56–381, 1956–2 C.B. 953.

126.13 Private litigation; production of records and testimony of Service personnel. Guidelines for persons requesting the production of records or the testimony of officers or employees of the Service in litigation in which the Federal Government is not a party. Rev. Proc. 66–43 superseded. §§301.6103(a)–2, 301.9000–1. (Secs. 6103, 7213; '54 Code.)

Rev. Proc. 73–6, 1973–1 C.B. 752.

126.14 Self-incrimination; accountant's records; summons to attorney. A taxpayer's rights under the Fourth and Fifth Amendments are not violated by the enforcement of a summons compelling an attorney to produce an accountant's potentially incriminating records that were given to the attorney by the taxpayer. §301.7604–1. (Sec. 7604, '54 Code.)

Fisher, 425 U.S. 391, Ct. D. 1977, 1976–1 C.B. 411.

126.15 Self-incrimination; taxpayer records; summons to accountant. A taxpayer can-

not claim immunity under the Fourth or Fifth Amendment to prevent an accountant from complying with the Government's summons to produce business records given him to prepare the taxpayer's tax returns. §301.7604–1. (Secs. 7402, 7604; '54 Code.)

Couch, 409 U.S. 322, Ct. D. 1955, 1973–1 C.B. 609.

126.16 Summary proceeding; rights in distrained property. A Federal District Court has no jurisdiction to determine, in a summary proceeding, the respective rights of the parties in property of a taxpayer seized by the Government for delinquent taxes; petitioner, a third party claimant, could have its claim to the distrained property adjudicated in a plenary, but not in a summary, proceeding. §301.6331–1. (Sec. 6331, '54 Code.)

New Hampshire Fire Insurance Co., 362 U.S. 404, Ct. D. 1846, 1960–1 C.B. 629.

126.17 Summons; injunctive relief from enforcement; examination of taxpayer's records. The Commissioner issued summonses to an accounting firm employed by the attorneys of a taxpayer, directing the firm to produce records pertaining to the taxpayer. The attorneys sought injunctive relief from the enforcement of the summonses, claiming that the summonses were void because the records were work product in trial preparation and the production of the records would require the taxpayer to incriminate himself and deprive him of counsel. Denial of the injunction was upheld because the legal remedy provided by the Code works no injustice, suffers no constitutional invalidity, and provides full opportunity for judicial review before any coercive sanctions may be imposed. §§301.7602–1, 301.7604–1. (Secs. 7210, 7402, 7602, 7604; '54 Code.)

Reisman, 375 U.S. 440, Ct. D. 1887, 1964–1 (Part I) C.B. 517.

126.18 Summons; judicial enforcement; examination of taxpayer's records. The Government need not show probable cause to suspect fraud where it seeks to obtain judicial enforcement of an order for examination of a taxpayer's records unless the taxpayer raises a substantial question that judicial enforcement of the administrative summons would be an abuse of process. This question must be predicated on more than the fact of re-examination and the running of the statute of limitations on ordinary tax liability. §§301.7604–1, 301.7605–1. (Secs. 7402, 7604, 7605; '54 Code.)

Powell, 379 U.S. 48, Ct. D. 1891, 1965–1 C.B. 547; Ryan, 379 U.S. 61, Ct. D. 1892, 1965–1 C.B. 552.

126.19 Temporary injunction; transfer of funds from foreign branch of domestic bank. A U.S. district court has jurisdiction to issue a temporary injunction, pending service of process on a foreign corporation and an adjudication of the substantive tax issues on the merits, enjoining a domestic bank from transferring any property or rights to property held by it at any branch office within or without the U.S. for the account of a foreign corporation against which jeopardy assessments have been made. (Sec. 7402, '54 Code.)

First National City Bank, 379 U.S. 378, Ct. D. 1895, 1965–2 C.B. 457.

Tax Conventions

128.1 Australian convention; withholding. The remuneration received for services performed within the U.S. for an Australian employer by a nonresident alien who is a resident of Australia, and who is not present in the U.S. for a period or periods exceeding in the aggregate 183 days during the taxable year, is excepted from withholding provided the alien files with the employer the statement described in section 31.3401(a)(6)–1(e) of the regulations. §§31.3401(a)(6)–1, 31.3402(a)–(1). (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 76–381, 1976–2 C.B. 311.

128.2 Code of Federal Regulations; redesignated. Regulations under tax conventions appearing in 26 CFR are transferred to subchapter G and redesignated as Part 500 et seq.

1961–1 C.B. 863.

128.3 Domestic corporation wholly owned by France; exemption for wages paid to a French national. Pursuant to Article 16(1) of the United States-France Income Tax Convention, wages paid to a national of France by a U.S. corporation, organized by the French government to perform activities of a governmental nature, for services rendered in connection with the performance of these activities are exempt from United States taxation.

Rev. Rul. 84–174, 1984–51 I.R.B. 11.

128.4 Entertainers; "single loan-out" and "double loan-out" arrangements. Examples illustrate the tax consequences, under various sections of the Code and the U.S.-United Kingdom Income Tax Convention, of contracts between a U.S. person and a United Kingdom corporation for the performance of services by a foreign entertainer, sometimes referred to as "single loan-out" arrangements, and of contracts between a Channel Islands corporation, a United Kingdom corporation, and a U.S. person for the performance of services by a foreign entertainer, sometimes referred to as "double loan-out" arrangements. §§31.3401(a)(6)–1, 31.3402(a)–2. (Secs. 61, 482, 543, 861, 864, 871, 882, 1442, 3401, 3402; '54 Code.)

Rev. Rul. 74–330, 1974–2 C.B. 278; Rev. Rul. 74–331, 1974–2 C.B. 281.

128.5 German convention; release of excess tax withheld. Interim rules give effect to the reduced rate of withholding of U.S. income tax from dividends paid by U.S. corporations to residents or companies of Germany under the Protocol brought into force December 27, 1965, and provide for the release of excess tax withheld or for refund where the withheld tax has been paid to the Government. §31.6402(a)–1. (Secs. 1441, 6402; '54 Code.)

Rev. Proc. 67–24, 1967–1 C.B. 625.

128.6 Nondiscrimination clause; foreign source earned income; resident aliens. Resident aliens from Canada, Denmark, Germany, the Netherlands, and the United Kingdom qualify for the exclusion of earned income under section 911(a)(2) of the Code to the same extent as U.S. citizens under nondiscrimination clauses in applicable treaties. Amplified to include other listed countries. §31.3401(a)(8)(A)–1. (Secs. 911, 3401; '54 Code.)

Rev. Rul. 72–330, 1972–2 C.B. 444; Rev. Rul. 72–598, 1972–2 C.B. 451.

128.7 Physicians; U.K. citizen; VA hospital. A VA hospital that has substantial activity in the area of education, maintains an association with a State university, and teaches interns, residents in post-graduate training, and medical students enrolled at the university, but does not maintain a regular faculty or curriculum or a regularly organized student body, is not an educational institution for purposes of Article XVIII of the U.S.-United Kingdom Income Tax Convention. The salary paid by the hospital to a U.K. citizen employed for less than two years as a staff physician in a teaching and research capacity while simultaneously teaching at the university is subject to withholding under section 3402 of the Code. §§31.3401(a)(6)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 74–484, 1974–2 C.B. 342.

128.8 Teachers; Canadian residents in U.S. Remuneration received by a resident of Canada for teaching at a university while temporarily in the U.S. for a period not exceeding two years is subject to taxes imposed by the FICA, irrespective of the exemption accorded such an individual from the payment of U.S. income tax under the U.S.-Canada tax convention. §31.3121(a)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 56–609, 1956–2 C.B. 1066.

128.9 Temporary assignment; Canadian corporation's employee in U.S. for training. Salary received from a Canadian oil corporation by employees experienced in oil well drilling who are assigned to the U.S. for one year of training in off-shore drilling is not exempt from Federal income tax under Article IX of the U.S.-Canada Income Tax Convention and is subject to the FICA and income tax withholding. §31.3401(a)(6)–1. (Secs. 871, 3401; '54 Code.)

Rev. Rul. 76–19, 1976–1 C.B. 441.

Trade or business

(See: Self-employment tax)

Transportation services

130.1 Regional transit authority. Services performed by individuals who became employees of a regional transit authority and received coverage under the State's retirement system when the authority acquired a privately owned transit company do not constitute "covered transportation service" within the meaning of section 3121(j)(3) and are excepted from employment under section 3121(b)(7). Social Security coverage may be obtained only by an agreement between the State and the Secretary of Health, Education, and Welfare. §§31.3121(b)(7)–1, 31.3121(j)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 73–352, 1973–2 C.B. 324.

130.2 Transit authority. A transit authority was created as a political subdivision of a state in 1965. The authority covered its employees for social security purposes by means of an agreement with HEW under section 218 of the Social Security Act. In 1972 the authority acquired a private transit company, which was its first acquisition from private ownership of any part of its system, and all of the company's employees became employees of the authority. At the time of the acquisition there was no general retirement system covering the employees of the authority, and the services performed by all of its employees became "covered transportation service" within the meaning of section 3121(j). §§31.3121(b)(7)–1, 31.3121(j)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 80–149, 1980–1 C.B. 213.

130.3 Truck driver; Canadian citizen. Services performed within the U.S. by a Canadian citizen employed as a truck driver by a Canadian company are employment for purposes of section 3121(b). §31.3121(b)–3. (Sec. 3121, '54 Code.)

Rev. Rul. 79–318, 1979–2 C.B. 352.

130.4 Truck drivers; Canadian residents. Remuneration paid to residents of Canada who are not citizens of the U.S. and who, in performing services as truck drivers, enter and leave the U.S. at frequent intervals, is not subject to income tax withholding. However, such remuneration is subject to FICA taxes. §§31.3121(b)–3, 31.3401(a)(7)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 66–77, 1966–1 C.B. 242.

Unemployment funds

132.1 Contributions; credit against tax. A State law permits employers to make voluntary contributions to the State's unemployment compensation fund in addition to the required contributions. Such voluntary contributions cannot be taken as a credit against the Federal unemployment tax. S.S.T. 323 superseded. §§31.3301–1, 31.3302(a)–1. (Secs. 3301, 3302, 3306; '54 Code.)

Rev. Rul. 72–185, 1972–1 C.B. 327.

132.2 Contributions; credit reduction. Procedure is set forth for the computation of reductions in credit against tax reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, for 1961 and subsequent years, with respect to wages paid for services performed in a State which has not restored to the U.S. Treasury amounts which were made available under Title XII of the Social Security Act or under the Temporary Unemployment Compensation Act of 1958. Rev. Proc. 65–33 superseded. Amplified by Rev. Procs. 68–5 and 69–10. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 67–9, 1967–1 C.B. 583.

132.3 Contributions; credit reduction. The credit against unemployment tax for amounts paid into the unemployment funds maintained by various states, the District of Columbia, Puerto Rico, and the Virgin Islands is reduced for wages paid by employers during 1980 for services performed in those jurisdictions. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 80–60, 1980–2 C.B. 856.

132.4 Contributions; credit reduction. The credit against unemployment tax for amounts paid into the unemployment fund maintained by various states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands is reduced for wages paid by employers during 1981 for services performed in those jurisdictions. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 82–1, 1982–1 C.B. 366.

132.5 Contributions; credit reduction; 1984. Procedures are set forth for computing reductions in the credit against the tax reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, for 1984. §31 3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 85–11, 1985–1 C.B. 499.

132.6 Contributions; credit reduction; 1985. The credit against employment tax for amounts paid into the unemployment funds maintained by various states, Puerto Rico, and the Virgin Islands, is reduced for wages paid by employers during 1985 for services performed in those jurisdictions. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 86–8, 1986–7 I.R.B. 22.

132.7 Contributions; credit reduction; Alabama, Nevada, and New Hampshire, 1979. Employers that claimed valid credits under sections 3302(a) and 3302(b), based on their contributions to the unemployment funds of Alabama, Nevada, and New Hampshire during 1979, are entitled to those credits and are not liable for any additional tax or interest. Rev. Proc. 80–3 obsoleted. §§31.3302(a)–1, 301.6601–1. (Sec. 601.401, S.P.R.; Secs. 3302, 3303, 3304, 3310, 6601, '54 Code.)

Rev. Proc. 81–63, 1981–2 C.B. 690.

132.8 Contributions; credit reduction; Connecticut. The State credit against the Federal unemployment tax on wages reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, is reduced by 0.3 percent of the wages paid during 1974 for services performed in Connecticut. Rev. Proc. 69–10 modified. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 75–8, 1975–1 C.B. 648.

132.9 Contributions; credit reduction; Deleware and Pennsylvania. The credit against federal unemployment tax for amounts paid into the unemployment funds maintained by Delaware and Pennsylvania is reduced by 0.3 percent of the wages paid during 1979 for services performed in those States. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 80–2, 1980–1 C.B. 580.

132.10 Contributions; credit reduction; District of Columbia. The credit against Federal unemployment tax for amounts paid into the unemployment fund maintained by the District of Columbia is reduced by 0.3 percent of wages paid during 1977 for services performed in the District. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 78–2, 1978–1 C.B. 551.

132.11 Contributions; credit reduction; 1967. For 1967 the credit against Federal unemployment tax will not be reduced. Rev. Proc. 67–9 amplified. Amplified by Rev. Proc. 69–10. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 68–5, 1968–1 C.B. 747.

132.12 Contributions; credit reduction; 1968 and subsequent years. There will be no credit reduction for employers in any State, including Alaska and Michigan, for 1968 or any subsequent year. Rev. Procs. 67–9 and 68–5 amplified. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 69–10, 1969–1 C.B. 401.

132.13 Contributions; credit reduction; Rhode Island. The State credit against the Federal unemployment tax on wages reportable on Form 940, Employer's Annual Federal Unemployment Tax Return, is reduced by 0.3 percent of the wages paid during 1978 for services performed in Rhode Island. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 79–11, 1979–1 C.B. 492.

132.14 Contributions; credit reduction; various states; the District of Columbia; Puerto Rico; and the Virgin Islands. The credit against unemployment tax for amounts paid into the unemployment funds maintained by various states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands, is reduced for wages paid by employers during 1982 for services performed in those jurisdictions. §31.3302(c)–1. (Sec. 601.602, S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 83–24, 1983–1 C.B. 688.

132.15 Contributions; credit reduction; various states; District of Columbia; Puerto; Virgin Islands; 1983 The credit against unemployment tax for amounts paid into the unemployment funds maintained by various states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands, is reduced for wages paid by employers during 1983 for services performed in those jurisdictions. §31.3302(c)–1. (Sec. 601.602 S.P.R.; Sec. 3302, '54 Code.)

Rev. Proc. 84–5, 1984–1 C.B. 365.

132.16 Contributions; election to be subject to State law. An employer, not subject to the unemployment compensation law of a State, who makes an election requiring payment of contributions to its unemployment compensation fund may credit such contributions against the FUTA tax. S.S.T. 165 superseded. §31.3302(a)–1. (Sec. 3302, '54 Code.)

Rev. Rul. 69–356, 1969–1 C.B. 270.

132.17 Contributions; New Hampshire. Employers that claimed valid credits under sections 3302(a) and 3302(b), based on their contributions to the unemployment fund of New Hampshire for 1978, are entitled to those credits and are not liable for any additional tax or interest. Rev. Proc. 79–10 obsoleted. §§31.3302(a)–1, 301.6601–1. (Sec. 601.401, S.P.R.; Secs. 3302, 3303, 3304, 3310, 6601, '54 Code.)

Rev. Proc. 82–34, 1982–1 C.B. 489.

132.18 Contributions; subsidiary; credit against tax. Subsidiary contributions paid pursuant to New York State law by an employer into the New York State unemployment fund, in addition to contributions made at a normal or reduced rate, should be taken into consideration in determining the amount of State contributions to be allowed as a credit against the employer's taxes. Where a subsidiary rate is required by State law, the experience rate as called for in the annual Federal return of employers means the total of the employer's normal or reduced rate of tax plus the subsidiary rate. §31.3302(b)–1. (Sec. 3302, '54 Code.)

Rev. Rul. 60–355, 1960–2 C.B. 278.

132.19 Contributions; suspense fund. Payments to a state, made under protest and held in a suspense account pending the outcome of litigation, are not considered paid into the state unemployment fund until actually transferred thereto. (Sec. 3302, '54 Code.)

Rev. Rul. 56–561, 1956–2 C.B. 778.

132.20 Contributions; time considered paid. If payment of contributions to a state unemployment compensation fund is made after the due date of the return, the fact that state authorities accept it as timely under state law is not controlling for FUTA purposes. (Sec. 3302, '54 Code.)

Rev. Rul. 56–618, 1956–2 C.B. 780.

132.21 Exemption; church school employees. Employees of a school that is owned, supported, and controlled by a church or by a convention or association of churches and not a separate legal entity are employees of the church exempt from FUTA under section 3309(b)(1)(A). (Sec. 3309, '54 Code.)

St. Martin Evangelical Lutheran Church, 451 U.S.——, Ct. D. 2008, 1981–2 C.B. 199.

132.22 Exemption; unaffiliated religious school employee. The Tax Injunction Act deprived the District Court of jurisdiction to issue declaratory and injunction relief as to whether certain state and federal statutes violate the Establishment and Free Exercise Clauses of the First Amendment by requiring religious schools unaffiliated with any church to pay unemployment insurance taxes. (Sec. 3309, '54 Code.)

California, 457 U.S., Ct. D. 2014, 1982–2 C.B. 230.

United States

(See: Federal services; instrumentalities)

Vessels

134.1 Disabled seamen; salary, maintenance and cure payments. Regular salary payments made to seamen who become disabled in the service of their ships are wage continuation payments excludable from gross income, and constitute wages for employment tax purposes. How-

ever, if certain conditions specified in section 31.3401(a)–1(b)(8)(ii)(b) of the regulations are met, withholding of income tax is not required. Maintenance and cure payments, including cash subsistence payments while an out-patient, do not constitute compensation for services, are not taxable income, and do not constitute wages. I.T. 3977 amplified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–219, 1960–1 C.B. 383.

134.2 Seagoing employees; reporting of wages and payment of taxes. Procedures are set forth relating to the reporting of wages and payment of taxes with respect to seamen employed by certain maritime shipping operators. Mim. 6314 modified and superseded. §§31.6011(a)–1, 31.6011(a)–3, 31.6011(a)–4, 31.6302(c)–1. (Sec. 601.401, S.P.R.; Secs. 6011, 6302, '54 Code.)

Rev. Proc. 79–38, 1979–2 C.B. 501.

Wages

136.1 Absence due to illness of dependent. Payments made by an employer under a sick pay plan to an employee during a period while the employee was absent from work due to an illness of a dependent are not excluded from wages for FICA and FUTA purposes. §§31.3121(a)(2)–1, 31.3306(b)(2)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 68–189, 1968–1 C.B. 420.

136.2 Accumulated annual leave; lump-sum payment; Federal employee. A lump-sum payment for unused accumulated annual leave, paid separately to an individual leaving the Federal service, is a supplemental wage payment for income tax withholding purposes. Where the employing agency combines regular wages and the amount due for accumulated annual leave, the tax to be withheld is determined under the standard wage bracket or percentage method. §31.3402(g)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 67–131, 1967–1 C.B. 291.

136.3 Actors; telecasting of old movies. Amounts distributed to actors by an actors guild from funds it received for consent to the telecasting of certain motion pictures were not distributed under the original contracts of employment between the producers and the actors and do not constitute wages. However, such amounts are includible in the gross income of the actors, for income tax purposes, in the year in which received. Rev. Rul. 54–225 distinguished. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–89, 1960–1 C.B. 379.

136.4 Advance; legal obligation to repay. Advance payments that employees are legally obligated to repay are loans and not wages. S.S.T. 379 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–337, 1968–1 C.B. 417.

136.5 Advance; no legal obligation to repay; salesmen. Advance payments actually or constructively made to salesmen against unearned salary, commissions or other remuneration for which they are to perform services, but which they are not legally obligated to repay, are wages at the time of payment. S.S.T. 68 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–239, 1968–1 C.B. 414.

136.6 Agent-drivers and commission-drivers; computation method. Method for computing wages of agent-drivers or commission-drivers who are either common law employees or statutory employees for purposes of the FICA and FUTA. Mim. 6787 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–260, 1973–1 C.B. 412.

136.7 Agricultural labor; commodity storage receipts. Payments made to farm employees in commodity storage receipts that are immediately converted to cash are not excepted from wages under section 3121(a)(8)(A). §31.3121(a)(8)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 79–207, 1979–2 C.B. 351.

136.8 Allowances; Navy physician and medical personnel assigned to U.S. Capitol. Allowances paid under the Legislative Branch Appropriations Acts to the Attending Physician in the U.S. Capitol and medical personnel assigned to assist that individual, all of whom are members of the U.S. Navy who are receiving regular Navy pay, are includible in their gross incomes under section 61 and subject to income tax withholding. The allowances are excepted from employment for FUTA purposes. Whether the allowances are wages subject to FICA is to be determined by the head of the Department of Navy. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(a)–1. (Secs. 61, 3121, 3306, 3402; '54 Code.)

Rev. Rul. 78–432, 1978–2 C.B. 69.

136.9 Allowances; protective clothing. Protective clothing allowances paid to coal mine employees by their employer who reasonably anticipated that the amounts would be entirely spent on such clothing are not wages for purposes of the FICA, FUTA, and income tax withholding; however, after the employer determined that it was reasonable to believe that employees spent only an average of 75 percent of the allowance on the clothing, then only 75 percent of the allowance was excludable. Rev. Rul. 69–451 modified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–548, 1976–2 C.B. 308.

136.10 Amounts shown on Form W–2; armed forces. The amount shown as wages in the Social Security Information portion of the Witholding Tax Statement, Form W–2, furnished a member of the uniformed services on active duty is not necessarily the same as that shown on such form for income tax withholding purposes since only the member's basic pay constitutes wages subject to the taxes withheld under the FICA. §§31.3121(i)–1, 31.6051–1. (Secs. 3121, 6051; '54 Code.)

Rev. Rul. 58–532, 1958–2 C.B. 879.

136.11 Annual wage limitation; employer tax. An employer may not, in determining the first $4,200 of wages paid to an employee under the FICA, take into consideration wages paid to such employee by another employer (other than a predecessor employer) in the same year; neither may he obtain a refund of employer tax paid on such wages by him. Modified by Rev. Rul. 57–32. (Sec. 3121, '54 Code.)

Rev. Rul. 55–584, 1955–2 C.B. 394.

136.12 Annual wage limitation; employer tax. In determining the first $4,200 of wages paid to an employee, no consideration may be given to wages paid to the employee by another employer, except in the case of wages paid by a successor employer subsequent to a merger or consolidation. Neither of two corporations which merged during the taxable year is entitled to a refund of any portion of the employer tax paid on the first $4,200 of wages paid by each of them to the same employee prior to the merger. Rev. Rul. 55–584 modified. §31.3121(a)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 57–32, 1957–1 C.B. 301.

136.13 Awards from sales manager. Awards of cash or merchandise made to salesmen, who are employees of a corporation, by their division sales manager who is also an employee of the corporation, at the sales manager's own expense and on his own initiative, do not constitute additional wages to such salesmen. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–113, 1960–1 C.B. 382.

136.14 Back pay. Where a court requires the payment of back wages on behalf of an employee under section 16(c) of the Fair Labor Standards Act, the employer should withhold income and employment taxes at the time of payment to the Government and report both on current returns. §§406.300, 408.226. (Secs. 1426, 1622, '39 Code; Secs. 3121, 3402, '54 Code.)

Rev. Rul. 55–203, 1955–1 C.B. 114.

136.15 Back pay award; withholding rates. A court ordered back pay award paid to a dismissed federal employee who sues for wrongful discharge is wages in the year paid rather than in the year earned and is subject to federal income tax withholding at the rates in effect at the time the award is paid. §§31.3401(b)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 78–336, 1978–2 C.B. 255.

136.16 Back pay ordered by NLRB. Payments made by an employer to an employee who has been reinstated and granted back pay for time lost under an NLRB order are wages. Payments under an NLRB order making the employer and a labor union jointly and severally liable are treated as wages paid by the employer even if the actual payment is made by the labor union. However, where the NLRB order is directed exclusively to the labor union, payment of a back pay award is not treated as wages. §§31.3121(a)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–55, 1957–1 C.B. 304.

136.17 Barter transactions; employee of barter club. A barter club uses credit units to credit or debit member's accounts for goods or services provided or received and values goods and services at the seller's normal retail price. As soon as units are credited to a member's account the member may use them to purchase goods or services from other members or may sell or transfer the units to other members. The dollar value of the credit units received for services by an employee of the club, who may use the units in the same manner as other members, is wages for purposes of the FICA, the FUTA, and income tax withholding. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 162, 262, 263, 451, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 80–52, 1980–1 C.B. 100.

136.18 Baseball player; College Scholarship Plan. Amounts paid to a college on behalf of a professional baseball player pursuant to a baseball club's College Scholarship Plan are not excludable from gross income as a scholarship but are wages. Modified to provide that the provisions relating to wages will not be applied prior to January 1, 1970. Rev. Rul. 58–145 distinguished. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(a)–1, 301.7805–1. (Secs. 3121, 3306, 3402, 7805; '54 Code.)

Rev. Rul. 69–424, 1969–2 C.B. 15; Rev. Rul. 71–532, 1971–2 C.B. 356.

136.19 Baseball player; league distribution to affiliated club. Amounts allocated by a baseball league to an affiliated club at the end of the playing season for distribution among the players on the basis of their performance as a team constitute additional wages and the club is responsible for the return and payment of applicable employment taxes, including income tax with-

holding. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 57–456, 1957–2 C.B. 629.

136.20 Bonus; former employees. Bonuses paid in installments to former employees, both before and after they reach the age of 65, after termination of the employment relationship, are remuneration for services performed in employment and constitute wages at the time of payment. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 57–92, 1957–1 C.B. 306.

136.21 Bonus; tax paid by employer. Methods of computing the gross bonus payment, the income tax to be withheld, and the employee tax under the FICA, where the employer wishes to pay an employee a stated amount of take-home pay as a bonus and pay the taxes to be withheld on behalf of the employee with respect to the bonus. §§31.3121(a)(6)–1, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)
Rev. Rul. 58–113, 1958–1 C.B. 362.

136.22 Bonus; U.S. Savings Bonds. Bonuses paid to employees in the form of U.S. Savings Bonds by a corporation are wages in the amount of the fair value of each bond at the time the bonds are received or made available to the employees. S.S.T. 349 superseded. §§31.3121(a)–1, 31.3121(a)–2, 31.3301–4, 31.3306(b)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3301, 3306, 3401, 3402; '54 Code.)
Rev. Rul. 71–143, 1971–1 C.B. 280.

136.23 Bonuses and vacation pay; accrued FICA and FUTA taxes. FICA and FUTA taxes attributable to bonuses and vacation pay of an accrual method employer are deductible in the taxable year in which such bonuses and vacation amounts are actually paid. Any change in the taxpayer's present method of accounting for such taxes is a change in method of accounting. §§31.3111–3, 31.3121(a)–1, 31.3121(a)–2, 31.3301–1, 31.3301–2. (Secs. 3111, 3121, 3301; '54 Code.)
Rev. Rul. 69–587, 1969–2 C.B. 108.

136.24 Bonuses paid by manufacturer to dealer's salesmen. Bonuses paid by a manufacturing company to salesmen employed by dealers engaged in selling the company's products are not wages. S.S.T. 206 superseded. §31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 70–337, 1970–1 C.B. 191.

136.25 Canadian teachers in U.S. Remuneration received by a resident of Canada for teaching at a university while temporarily in the U.S. for a period not exceeding two years is subject to taxes imposed by the FICA, irrespective of the exemption accorded such an individual from the payment of U.S. income tax under the U.S.-Canada tax convention. §31.3121(a)–1. (Sec. 3121, '54 Code.)
Rev. Rul. 56–609, 1956–2 C.B. 1066.

136.26 Cancellation of employment contract. An amount paid to an individual as a compromise settlement for the cancellation, before the normal expiration date, of an employment contract does not constitute wages. However, such amount is includible in gross income. §§408.207, 408.226. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)
Rev. Rul. 55–520, 1955–2 C.B. 393.

136.27 Cancellation of employment contract; lump-sum payment. The lump-sum payment received by an employee as consideration for the cancellation of his employment contract does not constitute wages. However, such amount does constitute gross income to the recipient in the taxable year of receipt. Distinguished by Rev. Rul. 74–252. §§31.3121(a)–1, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)
Rev. Rul. 58–301, 1958–1 C.B. 23.

136.28 Cash awards to employees for efficiency suggestions. Cash awards made to corporate employees for their suggestions on improving efficiency of the employer are wages. S.S.T. 232 superseded. §31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 70–471, 1970–2 C.B. 199.

136.29 Christmas fund distributed to employees by club. Amounts distributed to employees of a club from a Christmas fund made up of contributions by members of the club constitute wages for employment tax purposes. Such amounts are not considered tips. Effective with respect to distributions made on or after October 1, 1963. Such amounts are includible in gross income for income tax purposes. S.S.T. 261 revoked. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 64–40, 1964–1 (Part 1) C.B. 68.

136.30 Christmas gifts to employee. A distribution by an employer to his employees of food, such as hams, turkeys or other merchandise of similar nominal value, does not constitute wages or additional income to the employees if such distribution is primarily for the business purpose of promoting good relations with the employees. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 59–58, 1959–1 C.B. 17.

136.31 Christmas gifts to employee. Amounts paid to employees as Christmas gifts equal to a specified percentage of their regular monthly salaries are wages. S.S.T. 251 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 71–53, 1971–1 C.B. 279.

136.32 Civil Rights Act violation suit. Payments by a corporation to its employees resulting from a suit for violation of Title VII of the Civil Rights Act of 1964 are wages for employment tax purposes. Amplified by Rev. Rul. 84–92. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 72–341, 1972–2 C.B. 32.

136.33 Civil Rights Act violation suit; loss of prospective employment. Amounts paid by a company in partial settlement of a suit brought under the Civil Rights Act of 1964 by job applicants who allegedly were wrongfully refused employment on the basis of racial discrimination and suffered economic losses are wages for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs 3121, 3306, 3401; '54 Code.)
Rev. Rul. 78–176, 1978–1 C.B. 303.

136.34 Commissions to sales clerks; department store concessionaire. A concessionaire operates a leased department in a store as an independent contractor. The store considers the sales clerks in the department to be its employees and pays a salary to them. The concessionaire, who also directs and controls the clerks, pays them commissions on their sales. The sales clerks are employees of both the store and the concessionaire. Therefore, the commissions paid the clerks are wages and the concessionnaire is liable for employment taxes and the income tax withholding with respect to these wages. Distinguished by Rev. Rul. 69–316. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 66–162, 1966–1 C.B. 234.

136.35 Community property of married employee; FICA. The employees' tax imposed by the FICA attaches with respect to the total wages of a married employee in a community property State irrespective of the fact that such wages are community property of the husband and wife. S.S.T. 262 superseded. §§31.3101–1, 31.3102–1. (Secs. 3101, 3102; '54 Code.)
Rev. Rul. 71–116, 1971–1 C.B. 277.

136.36 Company-paid financial counseling fees. Financial counseling fees paid by a corporation for the benefit of its executives are wages subject to FICA, FUTA and income tax withholding. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 73–13, 1973–1 C.B. 42.

136.37 Company safety council. Amounts paid by a company to members of a safety council composed of designated employees who meet outside of regular working hours to discuss plans for the safety of company employees are wages. S.S.T. 134 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–596, 1968–2 C.B. 423.

136.38 Constructive payment; salary checks mailed at end of month. Treatment of wages paid by a company that mails salary checks on the last day of the month where employees can only receive them through the mail or are permitted to pick up their checks personally. Mim. 5796 revoked. §§31.3121(a)–2, 31.3301–4, 31.3402(a)–1, 301.7805–1. (Secs. 3121, 3301, 3402, 7805; '54 Code.)
Rev. Rul. 73–99, 1973–1 C.B. 412.

136.39 Contingent allotment; incentive compensation plan. The payment of a contingent allotment pursuant to an incentive compensation plan prior to January 3, 1968, to former employees who have retired or become disabled or to the beneficiary of an employee whose employment was terminated by death is not excepted from the term wages for FICA and FUTA purposes; however, if the contingent allotment is paid after January 2, 1968, it is excepted. The treatment of the contingent allotment for income tax withholding purposes is unaffected by the January 2, 1968 date; therefore, such payments to former employees who have retired or become disabled are subject to withholding; such payments to the beneficiary of an employee whose employment was terminated by death is not subject to withholding. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–286, 1969–1 C.B. 253.

136.40 Contract coal miners. Amounts charged against so-called contract coal miners' accounts that represent charges or expenditures for supplies or services for personal use are wages; however, amounts for items used in mining operations are not. Modified by Rev. Rul. 76–548. S.S.Ts. 138 and 326 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 69–451, 1969–2 C.B. 180.

136.41 Contributions to employee pension plan. Contributions of a school district that assumes and pays, or "picks up," the required contributions of its teachers to the qualified state pension plan are employer contributions to the plan and are excludable from employees' wages for purposes of income tax withholding. §31.3401(a)–1. (Secs. 402, 414, 3401; '54 Code.)
Rev. Rul. 77–462, 1977–2 C.B. 358.

136.42 Contributions to lay missionaries. Contributions made to lay missionaries and other lay employees of a mission during a period for which a certificate waiving exemption from the FICA taxes is in effect are wages for purposes of that Act. §31.3121(a)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 68–67, 1968–1 C.B. 38.

136.43 Cost-of-living allowances; Federal service; civilians outside U.S. Cost-of-living allowances paid to certain civilian employees of the U.S. Government stationed outside the U.S. are not wages subject to the withholding of income tax. Whether such allowances are wages subject to the FICA is to be determined by the head of the Government agency involved. §§406.207, 406.226. (Secs 1420, 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)

Rev. Rul. 54–40, 1954–1 C.B. 222.

136.44 Deceased employees; payments to beneficiaries and estates. Death benefit payments made to beneficiaries and to the estate of deceased employees as well as payments representing unpaid compensation for services rendered by deceased employees are not wages for purposes of the collection of income tax at source. The unpaid compensation for services rendered is wages for purposes of the FICA and FUTA. I.T. 3737 superseded. §31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–456, 1971–2 C.B. 354.

136.45 Deceased employees; uncashed paycheck reissued. A paycheck received but not cashed or deposited by an employee prior to his death should be reissued to his personal representative in the face amount since the compensation is still subject to income tax withholding and FICA. I.T. 3839 superseded. §§31.3101–3, 31.3402(a)–1. (Secs. 3101, 3402; '54 Code.)

Rev. Rul. 71–525, 1971–2 C.B. 356.

136.46 Deferred compensation; retired corporate officer. Payments made under a deferred compensation agreement to a retired officer of a company are wages under sections 3121(a), 3306(b), and 3401(a). §§31.3121(a)(13)–1, 31.3306(b)(10)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 82–176, 1982–2 C.B 223.

136.47 Deferred compensation; retired executives. A company's payments to its executives because of and upon or after retirement after attaining age 65 (the age provided in its separate pension plan), under a deferred compensation plan providing for payments upon termination of employment for any reason at any age are excludable from wages under the FICA and FUTA but are wages for purposes of income tax withholding. §§31.3121(a)(13)–1, 31.3306(b)(10)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 77–25, 1977–1 C.B. 301.

136.48 Deferred compensation; retired executives. Payments made by a company under its deferred compensation plan, which does not specify a retirement age, to an officer who retired at age 60 and who is also covered by a qualified pension plan allowing retirement at age 65 are not excepted from wages even though the company has a separate qualified pension plan for nonsalaried employees allowing retirement at age 60. Further, these payments made to the officer after reaching age 65 will not be excepted from wages. §§31.3121(a)(13)–1, 31.3306(b)(10)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–263, 1978–2 C.B. 252.

136.49 Dismissal payment; provided under employment contract. Payments made to an employee, following his involuntary termination, under the terms of a 3-year contract permitting the employer to terminate the employment relationship provided the employee is paid an amount equal to an additional 6-months salary, are in the nature of dismissal payments and are wages. Rev. Rul. 58–301 distinguished. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–252, 1974–1 C.B. 287.

136.50 Dismissal payment; settlement of employee's discrimination claim. A payment by a company to settle a discrimination claim brought against it by a former employee whose services were involuntarily terminated by the company is a dismissal payment and thus wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–572, 1972–2 C.B. 535.

136.51 Dismissal payment; termination of employer's operations. Dismissal payments made to former employees by a company which had terminated its operations are wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–408, 1971–2 C.B. 340.

136.52 Dismissal payment; union settlement after strike. Payments by a company to striking employees who were not reemployed after settlement of a strike are dismissal payments and constitute wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–166, 1973–1 C.B. 411.

136.53 Distributors of bakery products. Dealers engaged by a bakery company to sell and distribute its products on a full-time basis on assigned routes and in accordance with established company procedures are employees even though they operate their own trucks. Where the method used by the company in determining the dealers' wages fails to reflect the correct amount of wages earned, the company should adopt a method of computing wages similar to that stated in Mim. 6787. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 56–129, 1956–1 C.B. 470.

136.54 Distributors of bakery products. Conditions under which an individual who exclusively distributes one bakery's products is considered an employee for purposes of the FICA and the FUTA but not an employee for income tax withholding. Rev. Rul. 56–129 distinguished. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–269, 1975–2 C.B. 401.

136.55 Domestic service; noncash remuneration. Noncash remuneration paid for domestic services in a private home is not wages. However, noncash remuneration paid for domestic services in a local college club or local chapter of a college fraternity or sorority is wages. §§31.3306(a)–1, 31.3306(b)–1, 31.3306(c)(2)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 80–67, 1980–1 C.B. 221.

136.56 Domestic service; paid by third person. An individual performing domestic services in a private home is the employee of the person who directs and controls the services even though the wages for such services are provided by a third person. The employer must take into consideration any cash remuneration paid to the domestic by the third person when computing her wages. §31.3121(d)–2. (Sec. 3121, '54 Code.)

Rev. Rul. 56–605, 1956–2 C.B. 696.

136.57 Domestic service; remuneration during illness. Amounts of $50 or more paid to a domestic servant in a private home in each calendar quarter during which she was temporarily unable to perform services due to illness constitute wages, exept where paid after expiration of 6 months following the last month service was actually performed. §408.227. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 244, 1953–2 C.B. 310.

136.58 Domestic service; rent paid direct to landlord. Rent paid by an employer direct to a landlord or his agent for the quarters occupied by the employer's domestic servant is a payment of wages. §408.227(h). (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–384, 1954–2 C.B. 366.

136.59 Earnings retained to pay sick coworker under union plan. The entire earnings of a union member, without reduction for amounts retained by his employer pursuant to the rules of his union and paid over to a fellow union member who is absent from work because of sickness, are wages for employment tax purposes. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–347, 1973–2 C.B. 25.

136.60 Employee annuity payments; exempt organizations. An amount paid by an exempt organization for the purchase of a retirement annuity contract on behalf of an employee does not constitute wages subject to withholding for employment and income tax purposes. Distinguished by Rev. Rul. 65–208. §§405.107, 408.227. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)

Rev. Rul. 181, 1953–2 C.B. 111.

136.61 Employee annuity payments; exempt organizations. An exempt organization established a supplemental annuity plan, under which an employee agreed to a salary reduction to provide funds for the purchase of a nontransferable annuity contract in his behalf. The employee could make only one agreement during any taxable year and it applied only to amounts earned subsequent to the effective date of the agreement. The amounts used to purchase the annuity contract are wages for FICA purposes, but are not subject to income tax withholding. Rev. Rul. 181 distinguished. §31.3121(a)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 65–208, 1965–2 C.B. 383.

136.62 Employee annuity payments; exempt organizations; Form W–2. Amounts reportable as wages on Form W–2 for income tax withholding purposes by a section 501(c)(3) organization that purchases an annuity, including life insurance protection, for an employee pursuant to a salary reduction agreement must include that portion of the annuity payment attributable to the purchase of current life insurance and any amount in excess of the employee's exclusion allowance. However, for FICA tax purposes the entire amount must be reported, subject to the annual wage limitation. §31.6051–1. (Sec. 6051, '54 Code.)

Rev. Rul. 70–453, 1970–2 C.B. 287.

136.63 Employee compensation; deceased employee; death benefits; information reporting. An employer must report wages or other compensation for services performed by a former deceased employee and paid to the estate or the person entitled to receive the payment of the employee on Form 1099–MISC, Statement for Recipients of Miscellaneous Income, as nonemployee compensation. Rev. Ruls. 64–150 and 71–456 superseded. §§31.3121(a)–1, 31.3401(a)–1, 31.6051–1. (Secs. 691, 3121, 3401, 6041, 6051; '54 Code.)

Rev. Rul. 86–109, 1986–37 I.R.B. 14.

136.64 Employee disability payments. Disability benefit payments to employees who cease to be actively employed by reason of long-term disability and which are made under the employer's wage continuation plan funded through a trust administered by a commercial trustee are not "wages" for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(a)(2)–1, 31.3306(b)(2)– 1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 77–89, 1977–1 C.B. 300.

136.65 Employee's "idle time"; non-work periods. A company retains all of its employees through slack times during the year and pays them at their regular hourly rate for at least a minimum number of hours each pay period whether they work less than the minimum hours or perform no services at all. All such payments made to employees who perform no services for the guaranteed minimum hours not actually worked, designated as "idle time" payments, are wages for FICA purposes only for pay periods up to and in the month the employee reaches age 62, and for FUTA purposes only for pay periods up to and in the month the employee reaches age 65. "Idle time" payments made to employees who work less than the minimum number of hours are wages for purposes of the FICA and FUTA regardless of the employee's age. All "idle time" payments are wages for income tax withholding purposes regardless of the employee's age. Rev. Rul. 70–235 superseded. §§31.3121(a)–1, 31.3121(a)(9)–1, 31.3306(b)–1, 31.3306(b)(8)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–217, 1976–1 C.B. 310.

136.66 Employee's tax paid by employer without deduction from employee's wages. Guidelines are set forth for determining the amount of RRTA compensation and income tax withholding wages, when an employer, under an arrangement with an employee, pays the employee tax imposed by section 3201 for services rendered after September 30, 1981, without deducting the amount of the tax from the employee's cash remuneration. §§31.3201–2, 31.3231(e)–1, 31.3401(a)–1. (Sec. 601.401, S.P.R.; Secs. 3201, 3231, 3401, '54 Code.)

Rev. Proc. 83–43, 1983–1 C.B. 778.

136.67 Employee's tuition fees; paid by employer. Tuition fees paid by an employer on behalf of employees that are not excludable from gross income as scholarship or fellowship grants under section 117, but are compensatory and includible in the employees' gross income, constitute wages for purposes of the FICA, FUTA, and income tax withholding. Rev. Rul. 76–352 amplified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 117, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–184, 1978–1 C.B. 304.

136.68 Employee's tuition fees; paid or reimbursed by employer. Tuition fees an employer pays on behalf of its employees, either directly to an educational institution or as reimbursement to the employees, for educational courses taken with the approval of their supervisor that will be beneficial to a career in the employer's business, are not wages for the FICA, FUTA, and income tax withholding purposes. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 117, 162, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–71, 1976–1 C.B. 308.

136.69 Employer payments to doctors' trusts; medical corporation. A medical corporation that treated its doctors as employees during 1979 and 1980, is not entitled to relief under section 530 of the Revenue Act of 1978, when the doctors formed trusts in 1981 and the corporation made payments to the trusts for the doctors' services and did not treat the doctors as employees during that year. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–3. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 83–16, 1983–1 C.B. 235.

136.70 Employer payments to vacation trust fund. Amounts paid by an employer to a trust forming a part of his employees' vacation plan, where such amounts are constructive payments of compensation and thus employee contributions, are deductible under section 162 and not under section 404(a)(5). These amounts are taxable to the employees for the taxable year in which paid to the trust and are wages subject to employment taxes at the time paid. Rev. Rul. 57–316 distinguished. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 67–351, 1967–2 C.B. 86.

136.71 Employment agency fees; paid by employer. An employment agency fee paid by an employer under a contract with an agency providing that a job applicant will incur no liability for the fee to either the employer or the agency does not constitute wages and is not includible in the employee's gross income. Rev. Rul. 66–41 distinguished. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–351, 1973–2 C.B. 323.

136.72 Employment agency fees; reimbursed by employer. An amount equal to an employment agency fee previously paid by an employee which is reimbursed by the employer to the employee after he has completed a specified period of satisfactory service is additional wages subject to the Federal employment taxes and is includible in gross income. Distinguished by Rev. Rul. 73–351. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 66–41, 1966–1 C.B. 233.

136.73 Excess fund distribution; health and welfare fund. Cash payments, other than health and welfare benefits, distributed annually by a labor union from its health and welfare fund to employees of contributing employers are wages. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1, 31.3504–1. (Secs. 3121, 3306, 3401, 3504; '54 Code.)

Rev. Rul. 70–51, 1970–1 C.B. 192.

136.74 Exercise of employee stock option. Income realized by employees and former employees from a disqualifying disposition of stock acquired by the exercise of a qualified stock option described in section 422(b) is not wages; however, the employer may be required to report such income of the optionees who are employees for all or part of the year of disposition as "other compensation" on Form W–2. Income of an optionee who is not an employee in the year of disposition may be required to be reported on Form 1099. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–52, 1971–1 C.B. 278.

136.75 FICA; employment at American Institute in Taiwan. The FICA provisions are applicable to employees of the American Institute in Taiwan who, before becoming Institute employees, were employees of any agency of the U.S. covered by FICA and who, upon termination of their Institute employment, are entitled to reemployment or reinstatement with such agency. §31.3121(a)–1. (Secs. 892, 911, 912, 913, 3121; '54 Code.)

Rev. Rul. 80–208, 1980–2 C.B. 212.

136.76 FICA; exemption; totalizati agreement. Procedures are set forth for imp menting section 317(b) of the Social Secur Amendments of 1977, which relates to exempti from social security taxes on certain self-emplo ment income or wages during any period in whi there is a totalization agreement in effect betwe the U.S. and a foreign country. Amplified by R Proc. 84–54. §§1.1401–1, 31.3101–1, 31.3111- (Secs. 601.401, 601.602, S.P.R.; Secs. 164, 9 1401, 3101, 3111, '54 Code.)

Rev. Proc. 80–56, 1980–2 C.B. 851.

136.77 FICA; exemption; totalizati agreement; substantiation procedures. Proc dures are set forth for securing statements th self-employed individuals, employees, or emplo ers are subject to social security coverage in fo eign countries that have totalization agreemer with the United States. The statements are r quired in order to substantiate exemption fro the taxes imposed by FICA or SECA. Rev. Pro 80–56 amplified. §§1.1401–1, 31.3101- 31.3111–1. (Secs. 601.401, 601.602, S.P.R.; Se 1401, 3101, 3111, '54 Code.)

Rev. Proc. 84–54, 1984–28 I.R.B. 11.

136.78 FICA; parent and subsidiary co porations; prior years; guidelines. Guidelin are set forth for the collection of the taxes in posed by the FICA for a prior year in cases i volving a parent and its subsidiary corporatio where the wage limitation of section 3121(a)(of the Code was exceeded in such prior year wi respect to a particular employee who perform substantial services for more than one of the co porations although paid only by the paren §§31.3101–1, 31.3111–1, 31.3121(a)– 31.6413(c)–1. (Sec. 601.104, S.P.R.; Secs. 310 3111, 3121, 6413, '54 Code.)

Rev. Proc. 74–16, 1974–1 C.B. 437.

136.79 FICA; tax paid by employer wit out deduction from wages. Payment by an em ployer of employee FICA tax without deductio from the employee's wages under an agreeme between them constitutes "wages" for purposes income tax withholding; however, for purposes the FICA, no additional tax is applicable to t employee tax liability incurred by the employe Also, if the employee has two or more employe he is entitled to the special refund of excess ta paid on an amount exceeding the maximum annu al wage limitation. §§31.3101–1, 31.3102– 31.3121(a)(1)–1, 31.3401(a)–1, 31.6413(c)– (Secs. 3101, 3102, 3121, 3401, 6413; '54 Code.)

Rev. Rul. 74–75, 1974–1 C.B. 19.

136.80 FICA; tax paid by employer wit out deduction from wages. Payments by a employer of employee FICA tax without deduc tion from employee's wages under an agreemer between them are additional wages for FICA pu poses, the amount of wages to be determined by formula. The additional FICA wages so dete mined are includible in the employee's gross in come and are wages for purposes of income ta withholding. If otherwise appropriate, the em ployer may deduct the payments as ordinary an necessary business expenses under section 16 Rev. Rul. 74–75 modified. §§31.3101– 31.3306(b)(6)–1, 31.3401(a)–1, 31.6051– 31.6413(c)–1. (Secs. 61, 162, 3101, 3306, 340 6051, 6413; '54 Code.)

Rev. Rul. 86–14, 1986–5 I.R.B. 33.

136.81 FICA; tax paid by employer wit out deduction from wages; after Dec. 3 1980. Guidelines are set forth for determining th amount of wages under sections 3121(a) 3306(b), and 3401(a) when an employer pays th employee FICA tax imposed by section 3101 afte December 31, 1980, without deducting th amount of the tax from the employee's pa §§31.3101–1, 31.3121(a)–1, 31.3121(a)(6)– 31.3306(b)–1, 31.3306(b)(6)–1, 31.3401(a)–

(Sec. 601.401, S.P.R.; Secs. 3101, 3121, 3306, 3401, '54 Code.)

Rev. Proc. 81–48, 1981–2 C.B. 623.

136.82 Fishing boat crew. None of the services of the mate, engineer, and cook of a fishing boat paid an amount in addition to a share of the catch, or crew members entitled to hourly pay for repair of nets and other incidental work while the boat is in port, are excepted from employment under section 3121(b)(20) and all of their remuneration for the services is subject to FICA and income tax withholding. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 77–102, 1977–1 C.B. 299.

136.83 Fringe benefits not subject to withholding. Procedures are provided for reporting fringe benefits that total $600 or more and are includible in gross income on Form W–2, even if they are not subject to withholding pursuant to the decision of the Supreme Court in *Central Illinois Public Service Company v. United States.* §31.3401(a)–1. (Sec. 601.105, S.P.R.; Secs. 61, 3401, 6041, '54 Code.)

Rev. Proc. 80–53, 1980–2 C.B. 848.

136.84 Golf professional. A salaried golf professional and his assistants who manage the golf shop of a country club under its supervision and are required to give lessons to the clubs' members at its established rates are employees of the club. The golf professional's monthly salary, plus the proceeds derived from the golf shop and lessons given to members, minus the wages paid to his assistants and any expenses incurred in connection with operation of the golf shop are his wages. S.S.T. 367 superseded. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–626, 1968–2 C.B. 466.

136.85 Guam; employee of U.S. Wages paid by the U.S. to a citizen of Guam, who is a citizen of the U.S. only by virtue of collective naturalization under the Organic Act of Guam, for services performed in Guam, are not received from sources within the U.S. and are not subject to the FICA or income tax withholding. §§406.207, 408.203. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401 '54 Code.)

Rev. Rul. 55–184, 1955–1 C.B. 500.

136.86 Indian tribal council members. Amounts paid for services performed as Indian tribal council members do not constitute wages. However, amounts paid to other salaried employees of such councils and to employees of private tribal business enterprises constitute wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 59–354, 1959–2 C.B. 24.

136.87 Insurance salesperson; full-time; commissions. Commissions received after 1950 by a full-time life insurance salesperson with respect to policies sold prior to 1951 (when he was not an employee) constitute income from self-employment; however, commissions on policies sold after 1950 constitute wages. Distinguished by Rev. Rul. 58–177; clarified by Rev. Rul. 59–103. §§39.481–2, 408.204, 408.226. (Secs. 481, 1426, '39 Code; Secs. 1402, 3121, '54 Code.)

Rev. Rul. 54–312, 1954–2 C.B. 327.

136.88 Jury service. Where an employer pays an employee an amount equivalent to his regular salary during his absence from work on account of jury service and the employee later reimburses the employer to the extent of the pay received by him for the jury service, the amount received from the employer by the employee in excess of that received by him for jury service is wages. S.S.T. 389 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–425, 1968–2 C.B. 420.

136.89 Leave plan. Payments made to employees for periods of sickness or accident disability, and identified as such, under a company leave plan that permits employees to be absent from work a certain number of days each year for sickness, vacation, or holidays are not wages for purposes of the FICA and FUTA; however, other payments for vacation or holidays are wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–392, 1978–2 C.B. 251.

136.90 Legal fees and interest; award with back pay. The portion of a court-approved back-pay settlement between a union and a company that is used to pay legal fees incurred in enforcing a collective bargaining agreement on behalf of union members is not wages to the members. Likewise, the portion of back-pay award that is specified for legal fees and interest in connection with a claim against an individual's employer is also excludable from wages. However, the full amount of a similar award that does not specify that a part of the award is for legal fees is wages, even if the individual uses a portion of the award to pay attorney's fees. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 162, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 80–364, 1980–2 C.B. 294.

136.91 Lifetime services assigned to trust. A corporation's employee assigned "lifetime services" to a trust, and the trust contracted to provide services to the corporation for a monthly fee equal to what otherwise would be the employee's gross monthly salary. The employee continued to perform the same tasks for the corporation, under the same conditions, and with the same amount of control as before the assignment. The coporation's payments under the contract are wages for purposes of the FICA and income tax withholding. §§31.3101–1, 31.3111–1, 31.3401(c)–1, 31.3402(a)–1. (Secs. 61, 3101, 3111, 3401, 3402; '54 Code.)

Rev. Rul. 80–321, 1980–2 C.B. 33.

136.92 Lockout benefits. Lockout benefits paid by a union which, like strike benefits, are distributed in furtherance of union objectives do not, regardless of the medium in which paid, constitute wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–139, 1958–1 C.B. 14.

136.93 Lodging and allowance for groceries provided by employer. The value of lodging in a home furnished without charge by an exempt religious organization to its full-time representatives who are required to accept the lodging as a condition of employment and as the primary place for performing their duties, an allowance for groceries with which meals are prepared, and salaries of over $50 per quarter paid to the representatives, for whom coverage under the FICA has been elected by the organization, are wages for FICA purposes. The salaries and grocery allowance are also subject to income tax withholding. Modified by Rev. Rul. 81–222. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 119, 3121, 3401; '54 Code.)

Rev. Rul. 77–80, 1977–1 C.B. 36.

136.94 Meals; valuation. Factors determining the value to be placed upon meals furnished to employees as part of their compensation are set forth. S.S.T. 51 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–321, 1968–1 C.B. 415.

136.95 Meals; valuation. Although the valuation specified by State laws or regulations for meals furnished by an employer to employees as part of their compensation is taken into consideration in determining the value of such meals for purposes of Federal employment taxes, it is not exclusively determinative and must be considered in conjunction with other relevant factors. Rev. Rul. 68–321 clarified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–148, 1976–1 C.B. 310.

136.96 Meals and lodging. The value of meals and lodging that is not excludable from an employee's gross income under section 119 is wages under sections 3121(a), 3306(b), and 3401(a). Rev. Ruls. 57–471, 62–150, 68–322, 71–290, and 80–41 revoked and Rev. Ruls. 54–593, 55–630, 55–631, 71–411, 72–385, and 77–80 modified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 81–222, 1981–2 C.B. 205.

136.97 Meals and lodging; crew on fishing vessels. The value of meals and lodging furnished to fishermen performing services on board company-owned schooners is not wages for purposes of income tax withholding. S.S.T. 387 superseded. Modified by Rev. Rul. 81–222. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–385, 1972–2 C.B. 535.

136.98 Meals and lodging; employees on offshore oil rigs. The value of meals and lodging provided for the employer's convenience to employees working on offshore oil rigs is neither FICA nor FUTA wages. Sections 31.3121(a)–1(f) and 31.3306(b)–1(f) of the regs. are invalid. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306; '54 Code.)

Rowan Companies, Inc., U.S., Ct. D. 2009, 1981–2 C.B. 191.

136.99 Meals and lodging; exempt organization employees. An exempt nonprofit charitable organization that has waived its exemption from social security tax should include the fair value of living quarters and meals furnished to its employees in computing their wages. Modified by Rev. Rul. 81–222. §§408.216, 408.227. (Sec. 1426(1), '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–630, 1955–2 C.B. 616.

136.100 Meals and lodging; fraternity house employees. The value of living quarters and meals furnished to nonstudents who perform housekeeping services in or about a local chapter house of an exempt college fraternity constitutes wages. Modified by Rev. Rul. 81–222. §§408.218, 408.227. (Sec. 1426(b), '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–631, 1955–2 C.B. 619.

136.101 Meals and lodging; withholding. An employer supplying temporary manpower may not in all cases rely solely upon an employee's certification that he was working away from his permanent residence as a basis for excluding from wages allowances paid for meals and lodging. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 71–551, 1971–2 C.B. 354.

136.102 Meals furnished employees. The value of free meals furnished to employees is wages for income tax withholding only if the value of such meals is not excludable from gross income under section 119. Modified by Rev. Rul. 81–222. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–411, 1971–2 C.B. 103.

136.103 Milk deliverymen; adjustments for "shortages" or "overages". The net amounts paid milk deliverymen after adjustments for "shortages" or "overages" pursuant to an em-

ployment contract are the amounts considered wages. S.S.T. 355 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–124, 1971–1 C.B. 280.

136.104 Motion picture profits; artists, producers, and directors. Amounts paid to artists, producers, and directors under a profit sharing agreement with a motion picture company whereby in addition to their salary they receive a percentage of the profits, if any, derived by the company from a motion picture produced by the performance of their services are wages at the time they are actually or constructively paid even if an employment relationship no longer exists. S.S.T. 263 superseded. §§31.3121(a)–1, 31.3121(a)–2, 31.3301–4, 31.3306(b)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3301, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 72–119, 1972–1 C.B. 312.

136.105 Moving expenses. Payments or reimbursements to employees for moving expenses are excepted from wages for employment tax purposes, although includible in gross income under section 82, if it is reasonable to believe a corresponding deduction is allowable under section 217. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–482, 1970–2 C.B. 200.

136.106 Moving expenses; dislocation or trailer allowances. The dislocation or trailer allowance received by a member of the uniformed services in connection with a change in duty station is includible in the gross income of the recipient under section 82. However, such allowances are excepted from wages for purposes of income tax withholding unless the employer at the time of payment has reason to believe a corresponding deduction is not allowable under section 217. Rev. Rul. 65–158 modified. §31.3401(a)–1. (Secs. 82, 217, 3401; '54 Code.)

Rev. Rul. 75–362, 1975–2 C.B. 413.

136.107 Moving expenses; reimbursement of loss on sale of personal residence. Reimbursements received by Federal civilian employees or members of the Armed Forces from the Government for losses sustained on the private sale of personal residences, or the excess over fair market value at the time of the sale resulting from Government purchases of the residences, as the result of the closing of a military base are "wages" for purposes of the FICA and income tax withholding, unless specifically excepted. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 82, 1034, 3121, 3122, 3401; '54 Code.)

Rev. Rul. 76–342, 1976–2 C.B. 22.

136.108 Moving expenses; related expenses. Allowances or reimbursements paid by an employer to or on behalf of an employee transferred from one official station to another for permanent duty, for expenses related to the move, but which are not actual transportation expenses of moving the employee, his immediate family, household goods, and personal effects are wages for purposes of employment taxes. (Sec. 3401, '54 Code.)

Rev. Rul. 65–158, 1965–1 C.B. 34.

136.109 National Guard service. Payments made by an employer that are equivalent to the difference between the normal wages of employees who are temporarily absent from work while serving in a State National Guard and the amounts received from the State for such service are wages for employment tax purposes. S.S.T. 49 superseded. §§31.3121(a)(1)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–238, 1968–1 C.B. 420.

136.110 Negotiable promissory note; remuneration for employment. The fair market value of a negotiable promissory note on the date given to an employee as remuneration for employment is wages. S.S.T. 226 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–117, 1971–1 C.B. 279.

136.111 Nonresident alien crew members; fishing vessel. Services performed on the high seas by nonresident alien crew members hired in a foreign country by a U.S. commercial fishing vessel of more than 10 net tons, having a usual crew of 16, and that stops during its voyage at a U.S. port for fuel and supplies constitute "employment." However, amounts paid to the nonresident alien crew members are not wages subject to income tax withholding. §§31.3121(b)–3, 31.3306(c)–2, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–216, 1978–1 C.B. 305.

136.112 Nonresident aliens; journalist and newspaper correspondents. Wages for services performed within the U.S. by nonresident aliens as journalists and newspaper correspondents for a foreign news service in excess of 90 days during the taxable year or for a domestic newspaper publishing company are subject to FICA tax at the rate provided in section 3101 of the Code and to withholding of income tax at the graduated rates provided in section 3402. (See Rev. Rul. 70–246 with respect to determination of income source.) §§31.3121(b)–3, 31.3401(a)(6)–1, 31.3402(a)–1. (Secs. 3121, 3401, 3402; '54 Code.)

Rev. Rul. 71–125, 1971–1 C.B. 358.

136.113 Nutrition Program for the Elderly. Cash remuneration paid to employees under the Nutrition Program for the Elderly is "wages" for FICA and income tax withholding purposes. Food benefits received by employees under the program are not "wages." §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 3121, 3401; '54 Code.)

Rev. Rul. 79–342, 1979–2 C.B. 28.

136.114 Ordained minister; outside employment. Ordinary nonreligious services performed for a manufacturing company on the company's assembly line by an ordained minister, who had worked several years for the company prior to receiving written instructions from the church to do so, are not "in the exercise of his ministry," and the remuneration received for the services is not excepted from income tax withholding. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 78–229, 1978–1 C.B. 305.

136.115 Paid to French national employed by domestic corporation wholly owned by France. Pursuant to Article 16(1) of the United States-France Income Tax Convention, wages paid to a national of France by a U.S. corporation, organized by the French government to perform activities of a governmental nature, for services rendered in connection with the performance of these activities are exempt from United States taxation.

Rev. Rul. 84–174, 1984–51 I.R.B. 11.

136.116 Partnership; exempt and nonexempt owners. Joint ownership of an office building by a tax-exempt organization and by a nonexempt organization results in the creation of a nonexempt partnership, and wages paid for services performed for the partnership are not exempt from employment taxes. §§39.3797–4, 403.215, 408.216. (Secs. 1426, 1607, 3797, '39 Code; Secs. 3121, 3306, 7701, '54 Code.)

Rev. Rul. 54–369, 1954–2 C.B. 364.

136.117 Part-time consulting services; retired employee. Amounts paid by an employer to a retired employee for part-time consulting services rendered subsequent to his retirement are not wages. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–647, 1969–2 C.B. 100.

136.118 Payment of employee's FICA tax. Amounts paid by a state under an agreement with H.E.W. or by a domestic corporation under an agreement with the Service extending social security coverage to state employees or to employees of a foreign subsidiary of the domestic corporation, which are equivalent to the FICA tax that would have been imposed on the employees under section 3101, are includible in the employees' gross income and are wages subject to income tax withholding. §§36.3121(l)(1)–1, 31.3402(d)–1. (Secs. 61, 3121, 3402; '54 Code.)

Rev. Rul. 79–49, 1979–1 C.B. 57.

136.119 Payments after retirement; dividend units. A company has a plan under which managerial employees receive awards in the form of "dividend units" that entitle an employee to cash payments equal to dividends paid on stock as long as employed or after retirement. Such payments to retired employees are excludable from wages under sections 3121(a)(13) and 3306(b)(10) but are wages under section 3401(a). §§31.3121(a)(13)–1, 31.3306(b)(10)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 79–328, 1979–2 C.B. 351.

136.120 Payments during active military service; former employees. Payments made by employers to former employees who are actively serving in either the Armed Forces of the U.S. or the National Guard are not wages. S.S.T. 401 and Em. T. 432 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–136, 1969–1 C.B. 252.

136.121 Payments for lost time; employee dismissed without cause. Payment made to an employee by a railroad company for lost time following his dismissal without cause is includible in the employee's gross income in the taxable year received and is wages subject to withholding of income tax. Further, the amount paid is compensation subject to taxes imposed by the RRTA. O.D. 512 superseded. §§31.3231(e)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3231, 3401, 3402; '54 Code.)

Rev. Rul. 70–404, 1970–2 C.B. 5.

136.122 Payments for reuse of recordings. Payments made by a producer of musical jingles, spot announcements, radio transcriptions, and film sound tracks to a radio or television artist who is an employee of the producer with respect to services performed in making recordings, for the reuse of such recordings constitute wages. Distinguished by Rev. Rul. 60–89. §§406.207, 408.226. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)

Rev. Rul. 54–225, 1954–1 C.B. 216.

136.123 Payments to employees during factory shut-down. Amounts paid to certain employees by a company when its factory is not operating are wages even though it is reimbursed for such amounts by insurance companies. S.S.T. 167 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–9, 1969–1 C.B. 252.

136.124 Payments to employees for purchase of insurance. Amounts paid directly to

employees, pursuant to a union contract of employment, to be used exclusively for the purchase of individual hospitalization and surgical insurance coverage, constitute wages and are includible in the gross income of the employees. I.T. 3738 distinguished. Distinguished by Rev. Rul. 61–146. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–33, 1957–1 C.B. 303.

136.125 Payments to employees in lieu of health and welfare benefits. Payments by a government contractor directly to employees, to satisfy the Service Contract Act requirement that health and welfare benefits or cash in lieu thereof be provided on a parity with those benefits prevailing in the locality, constitute wages for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 106, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–241, 1975–1 C.B. 316.

136.126 Payments under Domestic Volunteer Service Act. Payments for supportive services or reimbursements of out-of-pocket expenses made to volunteers serving in programs pursuant to titles II and III of the Domestic Volunteer Service Act of 1973 are not wages for FICA and income tax withholding purposes. Amplified by Rev. Rul. 78–80. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 3121, 3401; '54 Code.)

Rev. Rul. 74–322, 1974–2 C.B. 17

136.127 Payments under Domestic Volunteer Service Act; Foster Grandparent Program. Supplemental stipends paid by sponsoring state agencies to volunteers in the Foster Grandparent Program in addition to the monthly stipend paid from Federal funds for the volunteers' services, both of which are authorized pursuant to title II of the Domestic Volunteer Service Act of 1973, are not wages for purposes of the FICA and income tax withholding. Rev. Rul. 74–322 amplified. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 3121, 3401; '54 Code.)

Rev. Rul. 78–80, 1978–1 C.B. 22.

136.128 Penalty deducted from schoolteachers' salaries after illegal strike. The penalties imposed by state law and deducted from the county schoolteachers' salaries after their illegal strike are wages for purposes of income tax withholding. §31.3401(a)–1. (Secs. 61, 162, 3401; '54 Code.)

Rev. Rul. 76–130, 1976–1 C.B. 16.

136.129 Pension trust contributions withheld; forfeitable. Amounts withheld from an employee's pay and contributed to a nonexempt pension trust, where participation is compulsory and contributions are forfeitable, are not wages subject to withholding. Rev. Rul. 56–473 clarified. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 72–94, 1972–1 C.B. 23.

136.130 Per diem allowance; executive training program participant; home test. An employee who participated in a 12–month executive training program at various offices throughout the country pending reassignment in a new location was away from home, and a per diem allowance paid by the employer not wages subject to income tax withholding. §31.3401(a)–1. (Secs. 162, 274, 3401; '54 Code.)

Rev. Rul. 80–212, 1980-2 C.B. 58.

136.131 Political campaign worker. Cash remuneration of less than $50 during a calendar quarter paid to a campaign worker for his services by a political candidate for election or reelection is not wages for purposes of FICA and income tax withholding. The services performed for him are not employment for purposes of FUTA. However, if the candidate forms a corporation to conduct the campaign, remuneration received from the corporation and services performed are not excepted from wages and employment. S.S.T. 312 superseded. §§31.3121(a)(7)–1, 31.3306(c)(3)–1, 31.3401(a)(4)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–202, 1972–1 C.B. 314.

136.132 Preretirement leave plan. Payments to employees under a negotiated preretirement leave plan based on years of employee service and age which was established to introduce and accustom eligible employees to permanent retirement gradually, constitute wages for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(a)–1, 31.3121(a)(9)–1, 31.3306(b)–1, 31.3306(b)(8)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–461, 1975–2 C.B. 394; Rev. Rul. 79–111, 1979–1 C.B. 318.

136.133 Preretirement leave plan. Payments made by a company to eligible employees under a negotiated preretirement leave benefit plan that (1) was adopted to offset layoffs resulting from periodic slack seasons, (2) provides benefits whether or not an actual need for a layoff ever occurs, and (3) guarantees benefits at the time leave is scheduled, are wages. Rev. Ruls. 56–249 and 60–330 distinguished and Rev. Rul. 75–461 amplified. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 80–124, 1980–1 C.B. 212.

136.134 Prizes; commission salesperson. Cash prizes and the cash value of prizes paid in any medium other than cash to retail commission salesmen or their wives are wages subject to FICA and FUTA. The cash prizes also are wages subject to income tax withholding and the cash value of prizes paid in any medium other than cash are subject to income tax withholding unless, under the regulations, the employer elects to disregard them. S.S.T. 29 and Rev. Rul. 55–232 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1, 31.3402(j)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 68–216, 1968–1 C.B. 413.

136.135 Reduced salary; reemployed civil service annuitant. The salary received by a reemployed civil service annuitant after an amount equal to the annuity allocable to the actual employment period was deducted as prescribed by law is wages for purposes of income tax withholding. §31.3401(a)–1. (Secs. 61, 3401; '54 Code.)

Rev. Rul. 79–1, 1979–1 C.B. 60.

136.136 Refugee. Amounts paid as wages for services performed in employment by a Hungarian refugee, who entered the U.S. under an immigration visa or as a parolee under the Immigration and Nationality Act, are subject to the FICA and income tax withholding. §31.3102–1. (Secs. 3102, 3402; '54 Code.)

Rev. Rul. 57–331, 1957–2 C.B. 11.

136.137 Regular and additional amounts in single payment; withholding. When an employer pays an employee regular wages and additional amounts in a single payment and specifically indicates the amount of each, the employer may withhold income tax at a flat 20 percent rate on the portion of the payment representing supplemental wages, if tax is withheld on the portion of the payment representing the employee's regular wages at the appropriate rate. Rev. Rul. 67–88 revoked. §31.3402(g)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 82–200, 1982–47 I.R.B. 10.

136.138 Reimbursed expenses; commission salesperson. Where a part of a traveling salesperson's gross commissions is considered an allowance toward expenses incurred in the business of the employer, or a reimbursement for such expenses previously incurred, the difference between the gross commissions and the allowance or reimbursements for expenses constitutes wages, provided proper identication is made at the time of payment. §§403.227, 406.207, 408.226. (Secs. 1426, 1607, 1621, '39 Code; Secs. 3121, 3306, 3401, '54 Code.)

Rev. Rul. 55–196, 1955–1 C.B 492.

136.139 Reimbursed expenses; commission salesperson. Payments made by a company to its employee under an account separate and distinct from his earned commissions account, in satisfaction of bills submitted by him to the company for reimbursement of amounts actually expended by him in conducting its business, do not constitute wages. §§403.227, 406.207, 408.226. (Secs. 1426, 1607, 1621, '39 Code; Secs. 3121, 3306, 3401, '54 Code.)

Rev. Rul. 55–197, 1955–1 C.B. 493.

136.140 Reimbursed expenses; employment interview. Allowances or reimbursements made to individuals by a prospective employer for expenses incurred in connection with interviews for possible employment, which are conducted at the invitation of the prospective employer, are not wages. Also, to the extent they do not exceed the expenses incurred, they are not includible in the individual's gross income. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 63–77, 1963–1 C.B. 177.

136.141 Reimbursed lunch expenses to employees while on company travel. Reimbursements made to employees in 1963 by the employer for lunch expenses incurred while on company travel but not away overnight are not wages subject to income tax withholding. §31.3401(c)–1. (Sec. 3401, '54 Code.)

Central Illinois Public Service Co., 435 U.S. 21, Ct. D. 1989, 1978–1 C.B. 310.

136.142 Reimbursed Medicare premiums; retired employees. Monthly Medicare premium reimbursements made by employers to retired employees and their spouses under a pension plan which provides for reimbursement of premiums paid are not wages. §§31.3121(a)(2)–1, 31.3306(b)(2)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 67–111, 1967–1 C.B. 279.

136.143 Reimbursed salary; labor union members. Amounts paid by an international labor union to reimburse local chapter delegates to its annual convention for lost salary are not "wages". Rev. Rul. 78–209 modified and superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 162, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 80–348, 1980–2 C.B. 31.

136.144 Religious order; social security coverage elected for members; members paid for services by hospital. Pay received from a hospital by a member of a religious order who has taken a vow of poverty and is instructed by the order to obtain outside employment is wages paid by the hospital under sections 3121(a) and 3401(a). Although the order elected social security coverage for its members and the member turns the pay over to the order, the pay is not "wages" for purposes of the computation under section 3121(i)(4). §§31.3121(a)–1, 31.3121(i)–4, 31.3401(a)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 81–267, 1981–2 C.B. 196.

136.145 Religious order members; outside earnings remitted to order. Amounts received by members of an exempt religious order, not acting as agents of the order, for work performed outside the religious community and paid over, in full or part, to the order, at its direction, are sub-

ject to the FICA and income tax withholding. Clarified by Rev. Rul. 77–290. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 61, 170, 3121, 3401; '54 Code.)

Rev. Rul. 76–323, 1976–2 C.B. 18.

136.146 Religious order or organization members; outside earnings remitted to order or organization. Remuneration remitted to a religious organization or order by a member who has taken a vow of poverty and is instructed by superiors to obtain outside employment is subject to FICA and income tax withholding. Remuneration remitted to the organization or order by another member who has taken a vow of poverty and in instructed to perform services in the business office of the supervising church is not subject to FICA or income tax withholding. O.D. 119 superseded and Rev. Rul. 76–323 clarified. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 61, 501, 511, 3121, 3401; '54 Code.)

Rev. Rul. 77–290, 1977–2 C.B. 26; Rev. Rul. 79–132, 1979–1 C.B. 62; Rev. Rul. 80–332, 1980–2 C.B. 34.

136.147 Religious organization members; paid by organization. Small remuneration paid by a religious organization to its members for work they performed pursuant to contracts between the organization and third parties constitute wages for purposes of the FICA and income tax withholding but the contract amounts paid to the organization are not includible in the members' gross income. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 511, 512, 513, 3121, 3401; '54 Code.)

Rev. Rul. 76–341, 1976–2 C.B. 307.

136.148 Resident alien; research associate at U.S. university. Amounts received by a resident alien for conducting research at a U.S. university on a U.S. Government project are not excludable from gross income as payments under a fellowship grant but represent compensation for services rendered and are wages. However, since the university is an exempt organization for purposes of section 501(a), such payments are excepted from employment for purposes of the FUTA. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 69–425, 1969–2 C.B. 16.

136.149 Restoration of unpaid wages and overtime compensation. Payments by employers for previously minimum wages and overtime compensation under the Fair Labor Standards Act of 1938 and the Walsh-Healy Government Contracts Act are wages whether the amounts are paid as a result of a judgment of a court or in accordance with a stipulation or settlement reached by the parties involved. However, payments of liquidated damages to employees and of liquidated damages to the Treasurer of the U.S. to be held in trust for the employees under the latter Act are not wages. S.S.T. 393, I.T. 3742, and Mim. 6028 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 72–268, 1972–1 C.B. 313.

136.150 Retirement pay. Special retirement payments made to a corporation's retired employees under a pension plan wherein such payments are based, in part, on the retired employees' entitlement to vacation pay, do not constitute wages for FICA and FUTA purposes. However, such amounts are subject to income tax withholding. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 65–276, 1965–2 C.B. 386.

136.151 Royalty payments to employees. Royalties paid by a company to its employees for licenses to manufacture articles under patents held by them are not wages. S.S.T. 95 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–499, 1968–2 C.B. 421.

136.152 Salary, maintenance and cure payments; disabled seamen. Regular salary payments made to seamen who become disabled in the service of their ships are wage continuation payments excludable from gross income, and constitute wages for employment tax purposes. However, if certain conditions specified in section 31.3401(a)–1(b)(8)(ii)(b) of the regulations are met, withholding of income tax is not required. Maintenance and cure payments, including cash subsistence payments while an out-patient, do not constitute compensation for services, are not taxable income, and do not constitute wages. I.T. 3977 amplified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–219, 1960–1 C.B. 383.

136.153 Salary returned; corporate officer. A corporate officer's voluntary return of a portion of his salary to the corporation does not affect the tax liability previously incurred nor give rise to a refund or credit of any portion of the taxes. S.S.T. 223 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–289, 1971–2 C.B. 339.

136.154 Scholarship and fellowship grants. Scholarship or fellowship grants, received by recipients who are not candidates for degrees, are not wages subject to FICA, FUTA, income tax withholding, or self-employment tax, even though the recipients must include in gross income amounts in excess of the limitations prescribed in section 117(b)(2)(B). §§31.3121(a)–1, 31.3306(a)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 60–378, 1960–2 C.B. 38.

136.155 Seniority rights relinquished by railroad employee; lump-sum payment. A lump-sum payment received by a railroad employee as consideration for relinquishing employment seniority rights constitutes compensation for purposes of the RRTA, is wages for purposes of income tax withholding, and is ordinary income in the taxable year of receipt. Rev. Rul. 58–301 distinguished. Rev. Rul. 59–227, which held in part that such rights did not constitute compensation for RRTA purposes and were not wages for purposes of income tax withholding, is modified, and, effective February 18, 1975, is superseded. §§31.3231(e)–1, 31.3401(a)–1, 301.7805–1. (Secs. 61, 1221, 1222, 3231, 3401, 7805; '54 Code.)

Rev. Rul. 75–44, 1975–1 C.B. 15.

136.156 Services of driver and use of truck; allocation. The factors to be considered in determining what portion of amounts paid for the use of a truck and the services of a driver is allocable to wages are restated. S.S.T. 104 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–624, 1968–2 C.B. 424.

136.157 Shoeshine stand; operated by barber shop porter. An individual serving as a porter in a barber shop for the privilege of operating a shoe shine stand in the shop is self-employed with respect to the operation of the stand; the fair rental value of the stand is treated as wages for porter services for self-employment tax purposes and is reportable as wages under the FICA. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–66, 1956–1 C.B. 432.

136.158 Shoeshine stand; operated by barber shop porter. An individual who performs services as a porter for the operator of a barber shop in exchange for the privilege of operating the shoeshine stand therein is an employee of the barber shop. The fair rental value of the shoeshine stand is wages. S.S.T. 147 superseded. §§31.3121(a)–1, 31.3121(d)–1, 31.3306(b)–1, 31.3306(i)–1, 31.3401(a)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–517, 1968–2 C.B. 454.

136.159 Sick leave payments. Payments for earned sick leave made to eligible employees for periods of absence from work due to illness are excluded from the term wages, but payments for unused sick leave are considered wages for FICA and FUTA purposes. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 65–275, 1965–2 C.B. 385.

136.160 Sick leave payments. Payments made to employees under a sick leave plan for absences necessitated by death of a relative or for routine medical or dental examinations are wages for purposes of FICA and FUTA; payments made under the plan on account of illness or injury are not wages. All such payments are subject to income tax withholding. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 79–110, 1979–1 C.B. 317.

136.161 Sick pay. A series of questions and answers explain the changes made by Pub. L. 97–123 regarding taxability of sick pay under the Federal Insurance Contributions Act and the Railroad Retirement Tax Act. §§31.3121(a)(2)–1, 31.3231(e)–1. (Sec. 601.401, S.P.R.; Secs. 3121, 3231, '54 Code.)

Rev. Proc. 82–20, 1982–1 C.B. 466.

136.162 Sick pay; pregnancy and childbirth. Payments made under a sick pay plan to employees who are absent from work because of pregnancy and childbirth are not "wages" for FICA and FUTA purposes. Modified by Rev. Rul. 82–190. §§31.3121(a)(2)–1, 31.3306(b)(2)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 81–129, 1981–1 C.B. 481.

136.163 Sick pay; pregnancy and childbirth. Payments made under a sick pay plan to employees who are absent from work because of pregnancy and childbirth are not "wages" for RRTA purposes. §31.3231(e)–1. Modified by Rev. Rul. 82–190. (Sec. 3231, '54 Code.)

Rev. Rul. 81–265, 1981–2 C.B. 199.

136.164 Sick pay; pregnancy and childbirth. Payments made under a sick pay plan during the first 6 months of an absence due to pregnancy are wages and compensation for purposes of FICA and RRTA when made on or after January 1, 1982. Rev. Ruls. 81–129 and 81–265 modified. §31.3121(a)(2)–1, 31.3231(e)–1. (Secs. 3121, 3231; '54 Code.)

Rev. Rul. 82–190, 1982–2 C.B. 222.

136.165 Sick pay; vacation pay; paid beneficiary. Payments made to the estate or beneficiary of an employee representing his wages during his last illness and his salary for the remainder of the month in which he died do not constitute wages for FICA purposes, however, vacation allowances do constitute wages. The portion of the monthly salary which represents sick pay is not taxable in the hands of the recipient. Death benefits made to the estate or beneficiary of a deceased employee and payments made which represent unpaid compensation for services rendered are not subject to withholding of income tax.

§§31.3121(a)–1, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)
Rev. Rul. 59–64, 1959–1 C.B. 31.

136.166 Sick pay plan required by state or local law. If a private employer establishes and maintains a sick-pay plan in accordance with the requirements of a state or local law or ordinance providing for wage regulation, the resulting sick pay is excluded from wages. §§31.3121(a)(2)–1, 31.3306(b)(2)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 81–231, 1981–2 C.B. 197.

136.167 Sick pay; unwritten plan. Payments that are made under an employer's unwritten sick pay plan that is open to all full-time employees and of which the employees have, for a number of years, been made aware by the customary practice of the employer are excepted from wages. §§31.3121(a)(2)–1, 31.3306(b)(2)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 80–303, 1980–2 C.B. 295.

136.168 Small business corporation shareholder; dividends; liability for taxes. Dividends that two sole shareholders of an electing small business corporation arranged to receive instead of reasonable compensation in the same amounts for services they performed constituted "wages" for which the corporation was liable for the taxes imposed by the FICA and the FUTA and the withholding of income tax. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 1371, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 74–44, 1974–1 C.B. 287.

136.169 State youth opportunity program payments. Summer employees of a railroad company under a State youth opportunity program who as a condition of their employment are required to consent that a portion of their remuneration be withheld and paid to the State are not required to include these amounts withheld in their gross income. Such amounts are not wages for purposes of the RRTA. §§31.3231(e)–1, 31.3401(a)–1. (Secs. 3231, 3401; '54 Code.)
Rev. Rul. 74–50, 1974–1 C.B. 22.

136.170 Stock; organizers and officers of corporation. The value of stock issued by a corporation to its organizers as compensation for services rendered prior to its incorporation does not constitute taxable wages. However, the fair marker value of any stock which individuals receive for services as officers of the corporation constitutes wages at the time the stock is transferred to such individuals. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 3121, 3401; '54 Code.)
Rev. Rul. 58–269, 1958–1 C.B. 344.

136.171 Stock; risk of forfeiture. A corporation transferred common stock to an employee subject to a substantial risk of forfeiture. The fair market value of the stock at the time the risk lapses is wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 83, 3121, 3306, 3401; '54 Code.)
Rev. Rul. 79–305, 1979–2 C.B. 350.

136.172 Stock; stock purchase plan; employer contributions. Contributions made by a company under a stock purchase plan not qualifying under section 401 or 423 are wages for purposes of FICA, FUTA, and income tax withholding in the amount that the fair market value of the stock on the date of the crediting of the stock to the employee's account exceeds the amount of the employee's contribution. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 78–185, 1978–1 C.B. 304.

136.173 Strike benefits. Benefits paid by a union to members who are on strike are not wages for purposes of the FICA, FUTA, and the withholding of income tax; they are, however, includible in gross income in the year of receipt. S.S.T. 247 superseded. Distinguished by Rev. Rul. 75–475. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 68–424, 1968–2 C.B. 419.

136.174 Strike benefits; strike-related. A labor union is the employer of its members who agree to and perform strike related duties directed by the union, are required to report in person daily at a union hall, and are paid for actual duty hours at an hourly rate based on a 40-hour week. Amounts paid to the members for their services are wages for purposes of the FICA, FUTA, and income tax withholding. Rev. Rul. 68–424 distinguished. §§31.3121(a)–1, 31.3121(d)–1, 31.3121(d)–2, 31.3306(a)–1, 31.3306(b)–1, 31.3306(i)–1, 31.3401(a)–1, 31.3401(c)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 75–475, 1975–2 C.B. 406.

136.175 Students; apprenticeship school; union and contractor's association. Preapprenticeship students attending a school, established pursuant to an agreement between a local union and contractor's association to finance training of preapprentices and apprentices are not employees. Apprentice students are employees of the contractors to whom they are assigned while attending the school and payments made to them by the educational and training trust fund are wages; the employer-contractors incur liability for FICA and FUTA taxes at the time payments are made by the fund to the apprentices and the fund is required to withhold income tax on such payments. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3504–1. (Secs. 3121, 3306, 3401, 3504; '54 Code.)
Rev. Rul. 69–519, 1969–2 C.B. 185.

136.176 Students; domestic services; university women's club. Domestic services performed by university students for a university women's club whose membership consists of the faculty and administration members, employees of affiliated organizations and family members of each group are not excepted from employment. S.S.T. 407 superseded. §§31.3121(b)(2)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)
Rev. Rul. 72–174, 1972–1 C.B. 315.

136.177 Students; Internal Revenue Service Scholarship Program. The Internal Revenue Service Scholarship Program is a work-study program for internal revenue agent trainees that usually selects disadvantaged high school seniors who intend to major in accounting at a college or university and who agree to work for the Service for at least two years after graduation. The amounts the Service pays for the educational expenses of the participants in the program, including travel and per diem, are wages subject to income tax withholding. §31.3402(a)–1. (Secs. 61, 117, 162, 3402; '54 Code.)
Rev. Rul. 76–230, 1976–1 C.B. 19.

136.178 Successor and predecessor employers; preparation of Forms W–2, W–3, 941, W–4. Standard and alternate procedures are provided for preparing and filing Forms W–2, W–3, 941, and W–4 when a successor employer acquires substantially all the property used in the trade or business of another employer (predecessor) and employs individuals who immediately prior to the acquisition were employed by the predecessor. Rev. Proc. 69–9 superseded. §§31.6011(a)–4, 31.6051–1. (Sec. 601.602, S.P.R.; Secs 6011, 6051, '54 Code.)
Rev. Proc. 83–66, 1983–2 C.B. 585.

136.179 Successor and predecessor employers; preparation of Forms W–2, W–3, 941, W–4, W–5. Standard and alternative procedures to be used in preparing employment tax forms when a predecessor-successor employer relationship exists. Rev. Proc. 83–66 modified and, as modified, superseded. §§31.6011(a)–4, 31.6051–1. (Sec. 601.602, S.P.R.; Secs. 6011, 6051, '54 Code.)
Rev. Proc. 84–77, 1984–48 I.R.B. 30.

136.180 Successor and predecessor employers; two corporations as successors of proprietorship. Where two corporations qualifying as successor-employers under the FICA and FUTA take over separate units of a business owned and operated by a sole proprietor, each corporation may treat wages paid to a retained manager by the predecessor sole proprietor during the calendar year prior to the disposition of the business as wages paid by it under the wage limitation provisions of the Acts. §§31.3121(a)(1)–1, 31.3306(b)(1)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 58–80, 1958–1 C.B. 345.

136.181 Successor employer; Government maintenance contractor. An employer who is a successful bidder for a U.S. Air Force on-base maintenance contract may qualify as a successor employer to the prior contractor for purposes of FUTA and FICA annual wage limitations where the property used in the performance of the contracts was the same Government-owned property acquired for use through an inventory accounting arrangement. It is immaterial that no interest in the property used was acquired from the predecessor employer. §§31.3121(a)(1)–1, 31.3306(b)(1)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 68–105, 1968–1 C.B. 418.

136.182 Successor employer; partnership succeeded by corporation. Where members of a partnership changed under circumstances similar to Rev. Rul. 54–31 and the partnership was succeeded by a corporation, if each entity employed eight or more persons for twenty weeks during the year, remuneration paid by the partnership may be considered as having been paid by the corporation for purposes of the FUTA. §403.228(a)(2). (Sec. 1607, '39 Code; Sec. 3306, '54 Code.)
Rev. Rul. 55–7, 1955–1 C.B. 499.

136.183 Successor employer; predecessor not dissolved. Wages paid by a predecessor employer to its employees should be treated as having been paid to such employees by the successor employer for purposes of the annual wage limitation, where the test prescribed relative to successor employers is met. The fact that the predecessor employer does not dissolve but remains a dormant corporation is immaterial. §408.227. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)
Rev. Rul. 55–585, 1955–2 C.B. 395.

136.184 Successor employer; subcontract operation; annual limitation. Wages paid to employees during a calendar year by a predecessor employer operating under a government contract may be treated by the successor employer, operating under a subcontract on an essential operation of that contract, as having been paid by the subcontractor to those employees for purposes of the wage limitation provisions of the FICA and FUTA. §§31.3121(a)(1)–1, 31.3306(b)(1)–1. (Secs. 3121, 3306; '54 Code.)
Rev. Rul. 72–269, 1972–1 C.B. 313.

136.185 Successor employer; three related predecessor employers. Where the employees worked for three related corporations during the year, all of which were taken over by a successor corporation, only the wages paid by the corporation for which they worked immediately prior to the succession may be counted for purposes of the

wage limitation under the FICA. §31.3121(a)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 56–678, 1956–2 C.B. 682.

136.186 Successor employer; 20–week requirement. Although the FUTA permits an employer to take credit on Form 940 for wages paid to an employee during the same taxable year by a predecessor employer, the credit is allowable only if both employing entities were employers for at least 20 weeks during that year. §403.228a(a)(2). (Sec. 1607, '39 Code; Sec. 3306, '54 Code.)

Rev. Rul. 54–313, 1954–2 C.B. 371.

136.187 Supplemental payments; withholding. Whether certain payments made to employees may be treated as supplemental wage payments and whether the flat 20 percent rate may be used for income tax withholding is discussed. The employer should follow the guidelines in Rev. Rul. 66–190 for withholding income tax on supplemental wage payments where an employee receives both regular wages and supplemental wages. §31.3402(g)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 66–294, 1966–2 C.B. 459.

136.188 Supplemental unemployment benefit trust. Benefits paid to former employees of a company from a particular trust pursuant to a supplemental unemployment benefit plan established as a result of a collective bargaining agreement do not constitute wages; however, the benefits are includible in gross income in the year received. Amplified to provide similar treatment where plans are unilaterally constituted by the employer, and where benefit payments are made by an employer direct to certain qualifying former employees under such a plan which does not involve the use of a trust. Distinguished by Rev. Ruls. 61–68 and 80–124. Amplified and modified by Rev. Rul. 77–347. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 56–249, 1956–1 C.B. 488; Rev. Rul. 58–128, 1958–1 C.B. 89; Rev. Rul. 60–330, 1960–2 C.B. 46.

136.189 Supplemental unemployment benefit trust. Benefits paid to former employees of a company from a trust fund, established pursuant to a supplemental unemployment compensation benefits plan, are not "wages" for purposes of FICA, and FUTA but are subject to income tax withholding. Rev. Ruls. 56–249 and 58–128 amplified and modified. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(o)–1. (Secs. 61, 3121, 3306, 3402; '54 Code.)

Rev. Rul. 77–347, 1977–2 C.B. 362.

136.190 Supplemental unemployment benefit trust; employer contributions. Contributions conveying fully vested and nonforfeitable interests made by an employer into separate and independently controlled security benefit trusts for each employee, each trust created pursuant to a collective bargaining agreement to furnish unemployment and certain other benefits to eligible employees, are subject to FICA, FUTA, and income tax withholding at the time paid into the trusts. Such contributions constitute additional compensation to the employees and are includible in gross income in the taxable year the contributions are made. Modified by Rev. Rul. 57–528 to provide that where the employees' rights are nonforfeitable, employer contributions are taxable to the employee under section 402(b). §31.3121(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–37, 1957–1 C.B. 18.

136.191 Teachers; program to improve education in desegregated schools. Amounts received by teachers and supervisors who participate in programs of the local board of education to improve the education of children in desegregated schools are wages subject to income tax withholding. Such amounts are not excludable from gross income as scholarships but represent compensation for services rendered or to be rendered. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 67–239, 1967–2 C.B. 73.

136.192 Tips. Several questions are answered concerning the treatment of tips where (1) a club adds 10 percent to the amount of the cafe charge to its members' accounts; (2) a hotel writes the amount of the tip on the waiter's check; (3) a lump-sum payment for tips to the head waiter of a hotel in which a banquet is held; (4) a restaurant guarantees a fixed income consisting partly of remuneration paid by the restaurant and partly of tips; and (5) whether tips are considered "accounted for by the employee to the employer" where an employee furnishes his employer a written statement showing the amount of his tips for the purpose of enabling his employer to include the tips in his reports under a State unemployment compensation act. S.S.Ts. 145 and 301 superseded. §31.3306(b)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–28, 1969–1 C.B. 270.

136.193 Tips; bellhops. Bellhops engaged by a hotel to render services to its guests, and whose remuneration is derived solely from tips paid directly to them by the hotel's guests and not accounted for by the bellhops to the hotel are employees of the hotel. Such tips are includible in the gross income of the bellhops but do not constitute wages. §§31.3121(d)–1, 31.3306(a)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 57–403, 1957–2 C.B. 643.

136.194 Tips; charge customers; reporting. The employer and employee's reporting requirements for tips added to a waiter's check by a charge customer and paid over to the waiter by his employer are clarified. The provisions of this Revenue Ruling relating to charge tips that are not reported by the employee to the employer on Form 4070, or a substitute, will be applied for calendar years beginning January 1, 1977. Rev. Ruls. 69–28 amplified and 75–400 superseded. §§31.3121(q)–1, 31.3401(f)–1, 31.6051–1, 31.6053–1, 301.7805–1. (Secs. 451, 3121, 3401, 6041, 6051, 6053, 7805; '54 Code.)

Rev. Rul. 76–231, 1976–1 C.B. 379.

136.195 Tips; FICA; reporting. A series of questions and answers is set forth concerning the manner for reporting and treating cash tips under the FICA. (Sec. 3121, '54 Code.)

Rev. Rul. 66–75, 1966–1 C.B. 231.

136.196 Tips; FUTA. Tips reported after 1965 by an employee to his employer, as required by section 6053(a) of the Code, are not wages for purposes of the tax imposed by the FUTA unless the tips are otherwise accounted for. §31.3306(b)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 66–54, 1966–1 C.B. 241.

136.197 Tips; FUTA; reporting. Tips reported in writing to an employer and taken into account in determining the employee's compensation under a state minimum wage law are wages for purposes of the tax imposed by the FUTA. Effective with respect to tips received on and after January 1, 1966. Rev. Rul. 58–168 distinguished. Amplified by Rev. Rul. 78–335. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 66–369, 1966–2 C.B. 451.

136.198 Tips; FUTA; reporting. Tips reported in writing to an employer are wages for FUTA purposes to the extent they are taken into account by the employer in determining the employee's compensation under the federal minimum wage law. Rev. Rul. 66–369 amplified. §31.3306(b)–1. (Sec. 3306, '54 Code.)

Rev. Rul. 78–335, 1978–2 C.B. 254.

136.199 Tips; hotel service charge. An amount charged a customer by a hotel as a service charge for utilizing the dining facilities of the hotel and subsequently disbursed to waiters and other hotel employees is not a tip or gratuity but constitutes wages. Amplified by Rev. Rul. 59–252. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–397, 1957–2 C.B. 628.

136.200 Tips; hotel service charge; banquet facilities. Where negotiations between a hotel and a customer for the use of the hotel's banquet facilities are not restricted to the cost of meals and beverages but also include or contemplate additional amounts for distribution to employees of the hotel, such amounts are not tips or gratuities but constitute wages. Rev. Rul. 57–397 amplified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 59–252, 1959–2 C.B. 215.

136.201 Tips; minimum wage law. The amount of tips or gratuities accounted for by an employee to the employer, to the extent required for compensation determination under the provisions of a state minimum wage act, constitutes wages for employment tax purposes and income tax withholding. S.S.T. 301 distinguished. Distinguished by Rev. Rul. 66–369. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–168, 1958–1 C.B. 343.

136.202 Tips; rate reduction. Guidance is provided for employers that want to apply to the district director to have the tip rate of a large food and beverage establishment reduced from 8 percent to a figure not less than 2 percent. §31.6053–3. (Sec. 601.401, S.P.R.; Sec. 6053, '54 Code.)

Rev. Proc. 85–4, 1985–1 C.B. 493; Rev. Proc. 85–10, 1985–1 C.B. 499.

136.203 Tips; regular wages; withholding method. Employers whose employees receive both regular wages and tips may, in computing the amount of income tax to be withheld, either (1) treat the tips as if part of the current or preceding wage payment and use the regular graduated withholding rates or (2) if income tax has been withheld from the regular wage payment, determine the tax to be withheld from tips by using a flat 20 percent rate. §31.3402(g)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 66–190, 1966–2 C.B. 457.

136.204 Tips; service charge required by private club. Amounts required to be paid to a private club by its members as mandatory gratuities are service charges rather than tips. (Sec. 3121, '54 Code.)

Rev. Rul. 66–74, 1966–1 C.B. 229.

136.205 Tool allowance. A tool allowance paid by a company to each of its union employees regardless of whether they use their own tools or those furnished by the company is a part of the company's wage structure and is, therefore, subject to employment taxes and income tax withholding. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 65–187, 1965–2 C.B. 382.

136.206 Trading stamps; commissions. The fair value of trading stamps distributed in payment of commissions to employees is includible in wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–365, 1968–2 C.B. 418.

136.207 Trainee at medical school; MEDEX program. Amounts received by former military corpsmen, as trainees under the MEDEX program at a medical school of a State educational institution are not wages for employment tax purposes even though a portion of such amounts must be included in the trainees' gross income because of the limitations prescribed by section 117(b)(2)(B). §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–379, 1971–2 C.B. 95.

136.208 Trainee with private company; part of wages paid by State. Individuals placed in training with a company that is reimbursed by a State for part of their wages are employees of the company; wages of the individuals are computed and reported by the company without regard to the State's reimbursement. S.S.T. 169 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–494, 1968–2 C.B. 432.

136.209 Travel allowance; construction worker. A flat per diem allowance paid to its employees by a construction company that provides free company transportation between its headquarters and job sites, and also reimburses those employees using their own vehicles for the same travel, is additional remuneration to the employees and constitutes wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–445, 1974–2 C.B. 325.

136.210 Unemployment benefit trust; repayments by employees; withholding. Forms W–2 should not reflect either the wages or income tax withheld of employees who received benefit payments under a supplemental unemployment benefit plan and later repaid to the trust the amounts received within the same taxable year prior to the time their Forms W–2 were issued and after adjustments to the withholding were made pursuant to section 6413 of the Code. However, if such repayments are made after the Forms W–2 were issued, but within the same calendar year, the trust should furnish Corrected Forms W–2. §§31.6051–1, 31.6413(a)–1. (Secs. 6051, 6413; '54 Code.)

Rev. Rul. 78–198, 1978–1 C.B. 433.

136.211 Unemployment payments; guaranteed annual income. Payments made to union member employees under a guaranteed annual wage plan negotiated and administered by an employer association are wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 73–22, 1973–1 C.B. 410.

136.212 Uniform allowance. An employee who is paid by his employer, under a reimbursement or other expense allowance arrangement, for the cost of acquisition and maintenance of uniforms is not receiving a wage subject to income tax withholding. I.T. 3978 superseded. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 72–110, 1972–1 C.B. 24.

136.213 Union payments. Payments made by a union to certain members thereof for time lost from their regular employment while conducting negotiations on behalf of the union are wages. S.S.T. 196 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–539, 1968–2 C.B. 422.

136.214 V.A. rehabilitative program. Amounts received by patients and members in V.A. hospitals and domiciliaries for services performed under the Administration's therapeutic and rehabilitative program are includible in gross income even though, under Pub. L. 87–574, 38 U.S.C. 618, these individuals are not Federal employees. Such amounts are not wages for purposes of the FICA and income tax withholding. §§31.3102–1, 31.3402(a)–1. (Secs. 3102, 3402; '54 Code.)

Rev. Rul. 65–18, 1965–1 C.B. 32.

136.215 Vacation allowances; preceding, during, or following sick leave. Vacation allowances paid to salaried or hourly-paid employees by an employer during, immediately preceding, or immediately following a period of absence from work on account of illness are wages subject to the FICA and FUTA. Rev. Rul. 57–384 distinguished. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 65–194, 1965–2 C.B. 382.

136.216 Volunteer services; charity-payee. Payments made by a hospital to a religious organization for services performed at the hospital by volunteer unpaid workers assigned by the organization to render such services are not wages and are not taxable to the volunteer workers. §31.3121(a)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 57–135, 1957–1 C.B. 307.

136.217 Work program of State under Manpower Development and Training Act. Participants in a State program, established to provide short-term employment in disaster relief activities for unemployed individuals and funded under the Manpower Development and Training Act of 1962, are employees of the State excepted from employment for purposes of the FICA and FUTA, but the payments made to them are subject to income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–413, 1974–2 C.B. 333.

136.218 Work relief program; State welfare agency. Payments to welfare recipients by a State welfare agency, under its work relief program, equal to the number of hours actually worked times the applicable hourly rate are compensation for services rendered. Such payments are includible in gross income and are wages subject to income tax withholding even though the recipient would not receive a smaller amount if he were unable to work or work were not available. Cash or payments in kind, such as food or other items, not directly attributable to service performed, are not includible in gross income or subject to withholding. Modified by Rev. Rul. 71–425. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 67–144, 1967–1 C.B. 12.

136.219 Work-study programs; Economic Opportunity Act; payments by college. Payments made by a college to student-employees who participate in a work-study program established under Title I–C of the Economic Opportunity Act of 1964, and to individuals who are employed full time by the college during the summer vacation period are compensation for services and are includible in the recipients' gross income, and are subject to income tax withholding. Payments for services performed for the college are subject to the FICA only if the services of the employees are "employment." §§31.3121(b)(8)–2, 31.3121(b)(10)–1, 31.3121(b)(10)–2, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 66–285, 1966–2 C.B. 455.

136.220 Work-training programs; Comprehensive Employment and Training Act. Payments to a trainee in a program under titles I and II of the Comprehensive Employment and Training Act for services performed during on-the-job training for a private construction company are wages subject to the FICA, FUTA, and income tax withholding. Such payments for work experience in a city clinic are wages subject to income tax withholding but the services are excepted from employment for FICA and FUTA purposes. Payments and allowances for which no services are performed, however, are not wages for employment tax purposes. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–246, 1975–1 C.B. 24.

136.221 Work-training programs; Indians. Payments made under both Title II–A of the Economic Opportunity Act of 1964 and the Manpower Development and Training Act of 1962 to unemployed and underemployed residents of an Indian reservation who participate in a training program to acquire skills in the construction trades are not wages. Further, such payments fall in the same category as other unemployment relief payments and are not compensation for services includible in gross income. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 68–38, 1968–1 C.B. 446.

136.222 Work-training programs; probationers. Stipends paid by a city to unemployed or underemployed probationers who are participants in a project established for the purpose of reducing their recidivism to crime and aiding them in acquiring training and skills to enhance their opportunities for gainful employment are not wages for purposes of the FICA or income tax withholding. Furthermore, such stipends fall in the same category as other relief payments and are not includible in gross income. §§31.3306(b)–1, 31.3401(a)–1. (Secs. 3306, 3401; '54 Code.)

Rev. Rul. 72–340, 1972–2 C.B. 31.

136.223 Work-training programs; removed air traffic controllers. Payments made by the Department of Transportation to or on behalf of individuals, removed from their positions as air traffic controllers, for expenses incurred in their training for other employment constitute wages. §31.3401(a)–1. (Secs. 61, 3401; '54 Code.)

Rev. Rul. 75–32, 1975–1 C.B. 14.

136.224 Work-training programs; State welfare agency. Payments made by a State welfare agency to participants in work-training programs, such as a program under Title V of the Economic Opportunity Act of 1964, that are equal to and in lieu of welfare payments the participant would otherwise receive are neither includible in gross income nor considered wages for FICA or income tax withholding purposes. If such payments exceed the amount that would have been received without working the entire amount will be considered as taxable gross income and wages, except to the extent that it can be shown that the amount received exceeds the fair market value of the services. Rev. Rul. 67–144 modified to the extent it holds that payments received under the facts therein are includible in gross income. §§31.3306(b)–1, 31.3401(a)–1. (Secs. 3306, 3401; '54 Code.)

Rev. Rul. 71–425, 1971–2 C.B. 76.

136.225 Workmen's compensation; insurance premiums paid by employer. Premiums paid by an employer on insurance required by the workmen's compensation act of a state are not wages. S.S.T. 234 superseded. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–84, 1971–1 C.B. 281.

136.226 Workmen's compensation; payments to employee; self-insured employer. Payments made by a self-insured employer to an injured employee in accordance with the provisions of the workmen's compensation act of a

state are not wages. S.S.T. 252 superseded. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–85, 1971–1 C.B. 280.

Waivers

138.1 Change in entity. Where there is a change in organization entity and all the conditions of section 403(a) of the Social Security Amendments of 1954 regarding waivers of exemption are not met, the organization's employees are precluded from the benefits of that section. §408.216. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 56–121, 1956–1 C.B. 667.

138.2 Exempt association incorporated. A tax exempt corporation formed to takeover the operations of an exempt unincorporated association is a new organization for purposes of filing a waiver certificate. §§31.3121(b)(8)–2, 31.3121(k)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 77–159, 1977–1 C.B. 302.

138.3 Exempt organization; filing before exemption established. Forms SS–15 AND SS–15a, filed in 1961 by a nonprofit charitable organization to waive its exemption from social security taxes pursuant to section 3121(k) were valid when filed even though the organization did not file an application for recognition of its section 501(c)(3) status until 1976. §§31.3121(b)(8)–2, 31.3121(k)–1. (Secs. 501, 3121; '54 Code.)

Rev. Rul. 77–315, 1977–2 C.B. 355.

138.4 Exempt organization; retroactive coverage. An employee of an organization exempt under section 501(a) of the Code which filed a valid certificate waiving its exemption from FICA taxes prior to the enactment of the Social Security Amendments of 1956 is not precluded from obtaining retroactive social security coverage under section 403(a) of such amendments. §31.3121(k)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 58–270, 1958–1 C.B. 356.

138.5 Exempt organization; constructive filing. An exempt organization that began withholding FICA taxes from its employees at the beginning of the year and filed Forms 941 and paid the tax for the first three quarters during the fourth quarter is deemed to have filed a waiver certificate. §§31.3121(b)(8)–2, 31.3121(k)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 80–337, 1980–2 C.B. 296.

138.6 Exempt organizations; hospital services. Services performed in the employ of a cooperative hospital service organization described in section 501(e) of the Code are excepted from employment for purposes of the FICA and the FUTA; however, for purposes of the FICA the exemption may be waived by the organization if it files a waiver certificate, Form SS–15. §§31.3121(b)(8)–2, 31.3306(c)(8)–1. (Secs. 3121, 3306; '54 Code.)

Rev. Rul. 74–493, 1974–2 C.B. 327.

138.7 Exempt organizations; termination. A private nonprofit school whose employees' services are excepted from employment under section 3121(b)(8)(B) of the FICA and which has had a waiver of its exemption in effect for three years is not entitled to terminate its waiver certificate under section 3121(k)(1)(D) or (k)(2) for budgetary considerations or because its employees desire to participate in a tax-sheltered annuity plan. §§31.3121(b)(8)–2, 31.3121(k)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 74–415, 1974–2 C.B. 337.

138.8 Exempt organizations; termination. A section 501(c)(3) organization that has given written notice requesting the immediate termination of its waiver certificate under the FICA in order to secure funds for the establishment of an alternative retirement plan for its employees may not terminate the waiver, which has been in effect for more than 10 years, until the required 2 years' advance notice period has elapsed. This conclusion would be the same even if the organization had not actually filed a waiver certificate, but was deemed to have done so under section 3121(k)(4) or (k)(5) of the FICA. §31.3121(k)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 78–7, 1978–1 C.B. 307.

138.9 Exempt organizations; termination; effective date. Methods are set forth to be used by a nonprofit organization to amend the effective date for terminating its waiver of exemption from social security taxes. (Sec. 601.104, S.P.R.)

Rev. Proc. 82–57, 1982–2 C.B. 846.

138.10 Foreign and home mission boards; concurring employees. Foreign and home mission boards sponsored by and operating under the jurisdiction of a particular religious organization are not separate autonomous entities. Such an organization desiring to have social security coverage extended to its employees must obtain the concurring signatures of at least two-thirds of the total number of all its employees computed at the time the waiver forms are filed. §408.216. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 55–470, 1955–2 C.B. 615.

138.11 Liability to withhold income tax; payors of interest and dividends. Situations are illustrated in which payors of interest, dividends, and patronage dividends may be granted temporary waivers from the withholding requirements of section 3451(a) of the Code because of undue hardship. §31.3451(a)–1. (Sec. 3451, '54 Code.)

Rev. Rul. 83–55, 1983–1 C.B. 240.

138.12 Liability to withhold income tax; payors of interest and dividends; guidelines. Guidelines are provided for persons responsible for withholding tax on interest, dividends, and patronage dividends who wish to request a temporary waiver of the withholding requirements under section 3451 because of undue hardship. (Sec. 601.104, S.P.R.)

Rev. Proc. 83–20, 1983–1 C.B. 678.

138.13 Library employees; city retirement system. A nonprofit library corporation organized with private endowment funds is not a wholly owned instrumentality, even though a city contributes two-thirds of its income. A waiver certificate filed pursuant to section 3121(k) of the FICA is not rendered ineffective as a result of the library's employees becoming eligible to participate in the city's retirement system. (Sec. 3121, '54 Code.)

Rev. Rul. 56–88, 1956–1 C.B. 464.

138.14 Minister; former lay employee. A lay employee of a church organization, who becomes an ordained minister, must comply with the self-employment tax waiver procedure for ministers in order to continue his social security coverage, even though his duties are not changed. §§1.1402(e)–1, 31.3121(k)–1. (Secs. 1402, 3121; '54 Code.)

Rev. Rul. 56–588, 1956–2 C.B. 566.

138.15 State employees. A wholly owned State instrumentality may qualify for exemption under section 501(c)(3) of the Code. Coverage under the Social Security Act of employees of a wholly owned State instrumentality may be effected only pursuant to a compact under section 218 of the Social Security Act. The waiver procedure provided in section 3121(k) of the FICA is not applicable. Amplified by Rev. Rul. 60–384 with respect to qualification under Section 501(c)(3) of the Code. (Sec. 3121, '54 Code.)

Rev. Rul. 55–319, 1955–1 C.B. 119.

138.16 Teachers; social security coverage. In determining whether the requisite two-thirds of its employees concur in the filing of waiver certificate Form SS–15 to obtain social security coverage for its employees, an exempt school should include only those teachers who are in an employment relationship as of the filing date of the certificate; accordingly, where such waiver is filed between school years, teachers engaged by oral agreement to teach from year to year on a continuing basis should be included for purposes of this determination, but those so engaged only for the school year should not be included. §31.3121(d)–1. (Sec. 3121, '54 Code.)

Rev. Rul. 60–114, 1960–1 C.B. 389.

Withholding

140.1 Absence for portion of payroll period. An employee's absence during some part of his regular payroll period does not change the basis for income tax withholding from his salary. §406.301. (Sec. 1621, '39 Code; Sec. 3401, '54 Code.)

Rev. Rul. 56–272, 1956–1 C.B. 498.

140.2 Accumulated annual leave; lump-sum payment; Federal employee. A lump-sum payment for unused accumulated annual leave, paid separately to an individual leaving the Federal service, is a supplemental wage payment for income tax withholding purposes. Where the employing agency combines regular wages and the amount due for accumulated annual leave, the tax to be withheld is determined under the standard wage bracket or percentage method. §31.3402(g)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 67–131, 1967–1 C.B. 291.

140.3 Advance payments. An employer ostensibly on a four-week payroll period but making advance payments at the end of the second week of such period is required to withhold income and employee taxes from the advance payments to make semimonthly deposits of the taxes withheld, together with the applicable employer tax, within three banking days after the close of the semimonthly period in which wages are paid. §§31.3401(b)–1, 31.6302(c)–1. (Secs. 3401, 6302; '54 Code.)

Rev. Rul. 66–376, 1966–2 C.B. 495.

140.4 Advertising agency; agent of State instrumentality. Individuals engaged and paid by an advertising agency on behalf of a State citrus commission to demonstrate citrus products of the State are employees of the commission for employment tax purposes; the advertising agency is responsible for the withholding of income tax from the wages paid by it to the demonstrators. Distinguished by Rev. Rul. 58–26. §§403.204, 403.205, 403.214, 406.203, 406.205, 408.204, 408.205, 408.214. (Secs. 1426, 1607, 1621, '39 Code; Secs. 3121, 3306, 3401, '54 Code.)

Rev. Rul. 54–471, 1954–2 C.B. 348.

140.5 Agricultural labor; voluntary agreements. Services performed by employees of a company in raising, harvesting and packing water cress, as well as transporting it to a freight terminal are agricultural labor; employer-employee voluntary agreements for withholding of income tax are permitted. S.S.T. 364 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1, 31.3402(a)–1, 31.3402(p)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 71–275, 1971–1 C.B. 288.

140.6 Agricultural labor; voluntary agreements. Services performed by employees of a company in cleaning, packing, and shipping seeds on the farm operated by the company are agricultural labor; employer-employee voluntary withholding agreements are applicable with respect to remuneration paid for such services. S.S.T. 230 superseded. §§31.3121(g)–1, 31.3306(k)–1, 31.3401(a)(2)–1, 31.3402(a)–1, 31.3402(p)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 71–550, 1971–2 C.B. 351.

140.7 Allowances; Navy physician and medical personnel assigned to U.S. Capitol. Allowances paid under the Legislative Branch Appropriations Acts to the Attending Physician in the U.S. Capitol and medical personnel assigned to assist that individual, all of whom are members of the U.S. Navy who are receiving regular Navy pay, are includible in their gross incomes under section 61 and subject to income tax withholding. The allowances are excepted from employment for FUTA purposes. Whether the allowances are wages subject to FICA is to be determined by the head of the Department of Navy. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(a)–1. (Secs. 61, 3121, 3306, 3402; '54 Code.)

Rev. Rul. 78–432, 1978–2 C.B. 69.

140.8 Allowances; protective clothing. Protective clothing allowances paid to coal mine employees by their employer who reasonably anticipated that the amounts would be entirely spent on such clothing are not wages for purposes of the FICA, FUTA, and income tax withholding; however, after the employer determined that it was reasonable to believe that employees spent only an average of 75 percent of the allowance on the clothing, then only 75 percent of the allowance was excludable. Rev. Rul. 69–451 modified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–548, 1976–2 C.B. 308.

140.9 Annualized wages; alternative methods. Interim instructions are provided to explain the annualizing of wages under the Tax Adjustment Act of 1966, Pub.L. 89–368, and the use of alternative methods of computing income tax to be withheld from wages paid on and after May 1, 1966. In general it may be assumed, pending issuance of regulations, that an alternative method is in compliance with the Act if it produces a result within 15 cents per weekly pay period of the result obtained using either statutory method. Any modification of the interim instructions in the regulations to follow will not affect the validity of acts performed under this Revenue Ruling. (Sec. 3402, '54 Code.)

Rev. Rul. 66–328, 1966–2 C.B. 454.

140.10 Apprenticeship school; union and contractors association. Preapprenticeship students attending a school, established pursuant to an agreement between a local union and contractor's association to finance training of pre-apprentices and apprentices are not employees. Apprentice students are employees of the contractors to whom they are assigned while attending the school and payments made to them by the educational and training trust fund are wages; the employer-contractors incur liability for FICA and FUTA taxes at the time payments are made by the fund to the apprentices and the fund is required to withhold Federal income tax on such payments. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1, 31.3504–1. (Secs. 3121, 3306, 3401, 3504; '54 Code.)

Rev. Rul. 69–519, 1969–2 C.B. 185.

140.11 Award for service longevity. An award paid by a labor union to its members who complete 25 years of service with a particular company is includible in the gross income of the recipient but does not constitute wages subject to income tax withholding. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 58–277, 1958–1 C.B. 41.

140.12 Award with civil service appointment. Amounts received by the recipient of an award, which carried with it an appointment to an officially established position as a civil service employee of the U.S. Government, are not amounts received as a fellowship grant, but are includible in gross income and subject to income tax withholding. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 58–322, 1958–1 C.B. 59.

140.13 Back pay. Where a court requires the payment of back wages on behalf of an employee under section 16(c) of the Fair Labor Standards Act, the employer should withhold income and employment taxes at the time of payment to the Government and report both on current returns. §§406.300, 408.226. (Secs. 1426, 1622, '39 Code; Secs. 3121, 3402, '54 Code.)

Rev. Rul. 55–203, 1955–1 C.B. 114.

140.14 Back pay award. A court ordered back pay award paid to a dismissed federal employee who sues for wrongful discharge is wages in the year paid rather than in the year earned and is subject to federal income tax withholding at the rates in effect at the time the award is paid. §§31.3401(b)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 78–336, 1978–2 C.B. 255.

140.15 Backup; erroneously withheld from exempt recipient. Guidelines are provided for exempt recipients that want to obtain a refund of taxes erroneously withheld under section 3406, relating to backup withholding, and who are not otherwise required to file an income tax return. §§35a.9999–1, 35a.9999–3. (Sec. 601.105, S.P.R.; Sec. 3406, '54 Code.)

Rev. Proc. 84–80, 1984–49 I.R.B. 7.

140.16 Backup; interest on U.S. Treasury obligations paid to citizens of U.S. possessions. The Bureau of Public Debt, its nominees, or agents are required to make information returns under section 6049 with respect to U.S. source interest paid on U.S. Treasury obligations to citizens of U.S. possessions. The payors may also be required to deduct and withhold, under section 3406 a tax equal to 20 percent of such payments. §35a.9999–3. (Secs. 3406, 6049; '54 Code.)

Rev. Rul. 85–200, 1985–52 I.R.B. 8.

140.17 Backup; optional reporting and depositing. An optional method is provided for an authorized transfer/paying agent to report and deposit amounts withheld for payers under the statutory provisions of backup withholding. Rev. Proc. 70–6, 83–48, and 84–25 amplified. (Sec. 601.602, S.P.R.)

Rev. Proc. 84–33, 1984–1 C.B. 502.

140.18 Barter transactions; employee of barter club. A barter club uses credit units to credit or debit member's accounts for goods or services provided or received and values goods and services at the seller's normal retail price. As soon as units are credited to a member's account the member may use them to purchase goods or services from other members or may sell or transfer the units to other members. The dollar value of the credit units received for services by an employee of the club, who may use the units in the same manner as other members, is wages for purposes of the FICA, the FUTA, and income tax withholding. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 162, 262, 263, 451, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 80–52, 1980–1 C.B. 100.

140.19 Beauty contest winner; awards and prizes. Under a contract which the sponsoring corporation required all participants in a beauty contest to sign, the corporation had the exclusive right to the services of the winner for one year for promotional purposes. The corporation gave the winner a scholarship and a new car, and during that year she was given amounts for personal appearances, modeling, and posing for photographs and monthly allowances for wardrobe and miscellaneous expenses. The corporation is liable for withholding of income tax on all of these items, except to the extent the monthly allowances meet the test as advances or reimbursements for traveling or other business expenses of the corporation. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 68–20, 1968–1 C.B. 55.

140.20 Bonuses; baseball players. Bonuses paid to individuals by a baseball club for signing their first contracts, which contain no provision requiring the performance of subsequent services, do not represent remuneration for services performed and, accordingly, are not wages subject to income tax withholding. However, bonuses paid to baseball players which are predicted on continued employment are subject to withholding. Distinguished by Rev. Rul. 71–532. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 58–145, 1958–1 C.B. 360.

140.21 Bonuses; tax paid by employer. Methods of computing the gross bonus payment, the income tax to be withheld, and the employee tax under the FICA, where the employer wishes to pay an employee a stated amount of take-home pay as a bonus and pay the taxes to be withheld on behalf of the employee with respect to the bonus. §§31.3121(a)(6)–1, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 58–113, 1958–1 C.B. 362.

140.22 Canadian company's employee in U.S.; U.S. citizen. Remuneration paid by a Canadian company that is not engaged in business in the U.S. and does not maintain any facility, office, or agency in the U.S. to its U.S. citizen employee, who performs all services for the company in the U.S., is wages for purposes of the FICA, FUTA, and withholding of income tax. The provisions of this Revenue Ruling, for purposes of FUTA, will not be applied with respect to wages paid before November 26, 1979. §§31.3121(b)–3, 31.3306(c)–2, 31.3401(a)–1, 301.7805–1. (Secs. 3121, 3306, 3401, 7805; '54 Code.)

Rev. Rul. 79–391, 1979–2 C.B. 352.

140.23 Canadian compensation; conversion to U.S. dollars. An employer who withholds income tax from employees compensated in Canadian currency must convert the compensation to U.S. dollars by using the free rate of exchange in effect on the first business day of each payroll period. The rate to be used is the noon buying rate for Canadian dollars as quoted by the Federal Reserve bank servicing the district in which the employer's headquarters is located. This rule is also applicable for purposes of the RRTA. Mim. 6564 superseded. §§31.3202–1, 31.3402(a)–1. (Secs. 3202, 3402; '54 Code.)

Rev. Rul. 73–163, 1973–1 C.B. 417.

140.24 Canadian corporation's employee temporarily assigned in U.S. for training. Salary received from a Canadian oil corporation by employees experienced in oil well drilling who are assigned to the U.S. for one year of training in off-shore drilling is not exempt from Federal income tax under Article IX of the U.S.-Canada Income Tax Convention and is subject to the FICA and income tax withholding. §31.3401(a)(6)–1. (Secs. 871, 3401; '54 Code.)

Rev. Rul. 76–19, 1976–1 C.B. 441.

140.25 Canadian residents; truck drivers. Remuneration paid to residents of Canada who are not citizens of the U.S. and who, in performing services as truck drivers, enter and leave the U.S. at frequent intervals, is not subject to income tax withholding. §§31.3121(b)–3, 31.3401(a)(7)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 66–77, 1966–1 C.B. 242.

140.26 Cash awards to employees for efficiency suggestions. Cash awards made to corporate employees for their suggestions on improving efficiency of the employer are wages. S.S.T. 232 superseded. §31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–471, 1970–2 C.B. 199.

140.27 Charity-payee; industry-wide fund-raising plan. Earnings for services donated by employees for charitable purposes under an industry-wide fund-raising plan are subject to income tax withholding and are includible in the gross income of the employees, even though such income is paid directly to the charitable organizations by the employers. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 58–495, 1958–2 C.B. 27.

140.28 Charity-payee; services of registered nurse. Amounts received from a hospital by a registered nurse who is a member of an exempt religious organization are not wages subject to income tax withholding and are excludable from her gross income, where she performed services in the hospital as an agent of the organization to which she remitted the amounts. Clarified and distinguished by Rev. Rul. 83–127. §31.3401(a)(9)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 68–123, 1968–1 C.B. 35.

140.29 Child care services in own home. Factual situations illustrate the tax treatment of amounts received and amounts expended by individuals providing child care services in their own homes. Rev. Rul. 56–70 superseded. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 61, 62, 162, 170, 1401, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 77–279. 1977–2 C.B. 12.

140.30 Christmas fund distributed to employees by club. Amounts distributed to employees of a club from a Christmas fund made up of contributions by members of the club constitute wages; such amounts are not considered tips. S.S.T. 261 revoked. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 64–40, 1964–1 (Part 1) C.B. 68.

140.31 Christmas gifts paid employees. Amounts paid to employees as Christmas gifts equal to a specified percentage of their regular monthly salaries are wages. S.S.T. 251 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–53, 1971–1 C.B. 279.

140.32 Citizen working overseas; U.S. employer; direct assessment by foreign country. A U.S. company provides its employees, as consultants, to a foreign company. All services performed by the employees, who are U.S. citizens, are within a foreign country whose law subjects their remuneration to income tax withholding. Under an agreement with the company, the foreign country assesses its tax on the employees on a direct collection basis. The company is not required to withhold federal income tax. §31.3401(a)(8)(A)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 79–392, 1979–2 C.B. 360.

140.33 City-owned facility employees. FICA and FUTA taxes are not applicable to remuneration paid to employees of a city that operates city-owned facilities. These taxes are applicable to remuneration paid to employees of a private corporation that operates city-owned facilities under a lease agreement. In both instances the wages are subject to income tax withholding. S.S.Ts. 2 and 89 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–130, 1968–1 C.B. 424.

140.34 Civil Rights Act violation suit; loss of prospective employment. Amounts paid by a company in partial settlement of a suit brought under the Civil Rights Act of 1964 by job applicants who allegedly were wrongfully refused employment on the basis of racial discrimination and suffered economic losses are wages for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–176, 1978–1 C.B. 303.

140.35 Clerks of the works. A corporation engaged clerks of the works to supervise a construction project. The clerks who are directly responsible to the corporation for performance of their services, and may be dismissed for cause, are, however, paid by the architectural firm which is reimbursed for the amounts advanced. The clerks are employees of the corporation for FICA and FUTA purposes. The architectural firm is responsible for income tax withholding. §§31.3121(d)–1, 31.3306(i)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–145, 1957–1 C.B. 332.

140.36 Combat pay; Armed Forces member detailed to another agency. A member of the Armed Forces serving in a combat zone while on detail to the Agency for International Development continues in an active service status during the period of his detail, is entitled to the combat pay exclusion and is excepted from income tax withholding. §31.3401(a)(1)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 69–353, 1969–1 C.B. 49.

140.37 Combat pay; exclusion for active service. The excess of compensation for active service in a combat zone of a commissioned officer over the $500 excludable from gross income under section 112 of the Code is not subject to withholding. §31.3401(a)(1)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 71–343, 1971–2 C.B. 92.

140.38 Commercial greenhouses; agricultural employees. Guides are set forth to be used in determining whether services performed prior to 1955 in the employ of commercial greenhouse operators constitute agricultural labor for purposes of the FICA. Revised to provide new guides for determining whether wages for agricultural labor are taxable and to provide guides for determining whether such wages are subject to income tax withholding. §408.208. (Sec. 1426, '39 Code; Secs. 3121, 3401, 3402, '54 Code.)

Rev. Rul. 54–587, 1954–2 C.B. 359; Rev. Rul. 55–707, 1955–2 C.B. 420.

140.39 Commissions paid employee and former customer. Commissions paid by a company to its employees for submitting names of prospective customers to whom merchandise was later sold are wages, but such commissions paid to a former customer are not wages. S.S.T. 207 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–452, 1969–2 C.B. 181.

140.40 Commissions to sales clerks of department store; concessionaire. A concessionaire operates a leased department in a store as an independent contractor. The store considers the sales clerks in the department to be its employees and pays a salary to them. The concessionaire, who also directs and controls the clerks, pays them commissions on their sales. The sales clerks are employees of both the store and the concessionaire. Therefore, the commissions paid the clerks are wages and the concessionaire is liable for employment taxes and income tax withholding with respect to these wages. Distinguished by Rev. Rul. 69–316. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 66–162, 1966–1 C.B. 234.

140.41 Computation; cumulative wages. Procedures for the computation of withholding of income tax on the basis of cumulative wages are illustrated. §31.3402(h)(3)–1. (Sec. 601.401, S.P.R.; Sec. 3402, '54 Code.)

Rev. Proc. 78–8, 1978–1 C.B. 562.

140.42 Contingent allotment; incentive compensation plan. The payment of a contingent allotment pursuant to an incentive compensation plan prior to January 3, 1968, to former employees who have retired or become disabled or to the beneficiary of an employee whose employment was terminated by death is not excepted from the term wages for FICA and FUTA purposes; however, if the contingent allotment is paid after January 2, 1968, it is excepted. The treatment of the contingent allotment for income tax withholding purposes is unaffected by the January 2, 1968 date, therefore, such payments to former employees who have retired or become disabled are subject to withholding; such payments to the beneficiary of an employee whose employment was terminated by death is not subject to withholding. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–286, 1969–1 C.B. 253.

140.43 Contract coal miners. Amounts charged against so-called contract coal miners' amounts that represent charges or expenditures for supplies or services for personal use are wages; however, amounts paid for items used in mining operations are not. Modified by Rev. Rul. 76–548. S.S.Ts. 138 and 326 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 69–451, 1969–2 C.B. 180.

140.44 Contract examination monitor and counselor for Federal agency. An individual who performs services as an examination monitor and counselor for a Federal agency, which has determined under the provisions of section 3122 of the FICA that the individual is not an employee but whose contract specifies the place of work, the hours of work, the general working procedures to be followed, and the right to approve substitutes and dismiss the individual is an employee of the agency, and is not engaged in a trade or business for purposes of the self-employment tax. The remuneration is subject to income tax withholding, but is not subject to the FICA or FUTA. Rev. Ruls. 147 superseded and 56–615 modified. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(c)(6)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3122, 3306, 3401; '54 Code.)

Rev. Rul. 75–343, 1975–2 C.B. 402.

140.45 Cost-of-living allowances; Government employees overseas. Amounts paid to Government employees stationed outside the continental U.S., which before conversion of their positions under the Classification Act of 1949, as amended, were designated as territorial cost-of-living allowances, but which by administrative order became part of their basic compensation, are

subject to income tax withholding. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 58–503, 1958–2 C.B. 390.

140.46 Death benefits; payments to beneficiaries and estates. Death benefits paid to beneficiaries and to the estates of deceased employees as well as payments representing unpaid compensation for services rendered by deceased employees are not wages for purposes of the collection of income tax at source. The unpaid compensation for services rendered is wages for purposes of the FICA and FUTA. I.T. 3737 superseded. §31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–456, 1971–2 C.B. 354.

140.47 Deceased employee; uncashed paycheck reissued. A paycheck received but not cashed or deposited by an employee prior to his death should be reissued to his personal representative in the face amount since the compensation is still subject to income tax withholding and FICA. I.T. 3839 superseded. §§31.3101–3, 31.3402(a)–1. (Secs. 3101, 3402; '54 Code.)

Rev. Rul. 71–525, 1971–2 C.B. 356.

140.48 Deferred compensation; retired corporate officer. Payments made under a deferred compensation agreement to a retired officer of a company are wages under sections 3121(a), 3306(b), and 3401(a). §§31.3121(a)(13)–1, 31.3306(b)(10)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 82–176, 1982–42 I.R.B. 36.

140.49 Deferred compensation; retired executives. A company's payments to its executives because of and upon or after retirement after attaining age 65 (the age provided in its separate pension plan), under a deferred compensation plan providing for payments upon termination of employment for any reason at any age are excludable from wages under the FICA and FUTA but are wages for purposes of income tax withholding. §§31.3121(a)(13)–1, 31.3306(b)(10)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 77–25, 1977–1 C.B. 301.

140.50 Deferred compensation; retired executives. Payments made by a company under its deferred compensation plan, which does not specify a retirement age, to an officer who retired at age 60 and who is also covered by a qualified pension plan allowing retirement at age 65 are not excepted from wages even though the company has a separate qualified pension plan for nonsalaried employees allowing retirement at age 60. Further, these payments made to the officer after reaching age 65 will not be excepted from wages. §§31.3121(a)(13)–1, 31.3306(b)(10)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–263, 1978–2 C.B. 252.

140.51 Dismissal payments; termination of employer's operations. Dismissal payments made to former employees by a company which had terminated its operations are wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–408, 1971–2 C.B. 340.

140.52 Domestic services; voluntary agreements. Specific situations are illustrated for determining whether certain types of services performed in private homes of employers are domestic services. Employees performing domestic services may enter into voluntary agreements with employers for the withholding of income tax from remunerations for such services. S.S.T. 242 superseded. §§31.3121(a)(7)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1, 31.3402(p)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 71–389, 1971–2 C.B. 341.

140.53 Employee; illegal aliens. A employer who has both U.S. citizens and illegal aliens performing the same services but does not withhold federal employment taxes from the remuneration of the alien workers is not entitled to relief under section 530 of the Revenue Act of 1978. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 82–116, 1982–1 C.B. 152.

140.54 Employee; treatment; corporate officers. A corporation, whose officers perform functions within the scope of their duties as corporate officers and receive pay called "draws," is not entitled to relief under section 530 of the Revenue Act of 1978. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 82–83, 1982–1 C.B 151.

140.55 Employee; treatment; doctors. A medical corporation that treated its doctors as employees during 1979 and 1980, is not entitled to relief under section 530 of the Revenue Act of 1978, when the doctors formed trusts in 1981 and the corporation made payments to the trusts for the doctors' services and did not treat the doctors as employees during that year. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–3. (Secs. 3102, 3111, 3301, 3403; '54 Code.)

Rev. Rul. 83–16, 1983–1 C.B. 235.

140.56 Employee; treatment; liability for tax; audit of predecessor. A corporation has met the "reasonable basis" test of section 530 of the Revenue Act of 1978, as extended, where the Service, on audit, did not challenge its predecessor's employment tax treatment of individuals as independent contractors rather than as employees. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Secs. 3102, 3111, 3301, 3403, '54 Code.)

Rev. Rul. 83–152, 1983–2 C.B. 172.

140.57 Employee; treatment; periods ending before July 1, 1982. Instructions are provided for implementing the provisions of section 530 of the Revenue Act of 1978, which, as amended, provides that an individuual who has not been treated as an employee by a taxpayer for any period ending before July 1, 1982, will not be deemed to be an employee for that period unless the taxpayer has no reasonable basis for not treating the individual as an employee. Rev. Procs. 78–35 and 80–35 modified and superseded. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Sec. 601.401, S.P.R.; Secs. 3102, 3111, 3301, 3403, '54 Code.)

Rev. Proc. 81–43, 1981–2 C.B. 616.

140.58 Employee; treatment; periods ending before 1980. Instructions are set forth for the implementation of the provisions of section 530 of the Revenue Act of 1978 that provide that an individual, not having been treated as an employee by a taxpayer for any period ending before 1980, will be deemed not to be an employee for that period unless the taxpayer had no reasonable basis for not treating the individual as such. Modified by Rev. Procs. 80–35 and 81–43. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Sec. 601.401, S.P.R.; Secs. 3102, 3111, 3301, 3403, '54 Code.)

Rev. Proc. 78–35, 1978–2 C.B. 536.

140.59 Employee; treatment, periods ending before 1981. Rev. Proc. 78–35 is modified to reflect changes made by Pub. L. 96–167 to section 530 of the Revenue Act of 1978, which, as amended, provides that an individual who has not been treated as an employee by a taxpayer for any period ending before 1981 will not be deemed to be an employee for that period unless the taxpayer had no reasonable basis for not treating the individual as an employee. Modified by Rev. Proc. 81–43. §§31.3102–1, 31.3111–4, 31.3301–1, 31.3403–1. (Sec. 601.401, S.P.R.; Secs. 3102, 3111, 3301, 3403, '54 Code.)

Rev. Proc. 80–35, 1980–2 C.B. 769.

140.60 Employee's annuity premium excluded from gross income. When an annuity contract is purchased by an educational institution pursuant to a salary reduction contract for one of its employees and all of the conditions of section 403(b) are met so that such premium payments are excluded from the gross income of the employee, the premium payments are not subject to income tax withholding. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 65–209, 1965–2 C.B. 414.

140.61 Employees of contract mail carrier. An individual who contracts for the delivery of mail is an independent contractor and not an employee of the U.S. Government nor is he an instrumentality of the U.S. Individuals he hires are his employees and they are subject to FICA, FUTA, and income tax withholding. S.S.T. 205 superseded. §§31.3121(b)(6)–1, 31.3306(c)(6)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 69–362, 1969–1 C.B. 254.

140.62 Employer contributions; nonoccupational disability benefits; New York. Employer contributions to a fund to provide for nonoccupational disability benefits for employees pursuant to Article 9 of the New York Workmen's Compensation Law are excludable from the gross income of covered employees and are not wages subject to income tax withholding. I.Ts. 4010, 4060, and 4075, Rev. Ruls. 130 and 257 superseded. §31.3402–1. (Sec. 3402, '54 Code.)

Rev. Rul. 72–191, 1972–1 C.B. 45.

140.63 Employer payments of employee tuition fees. Tuition fees paid by an employer on behalf of employees that are not excludable from gross income as scholarship or fellowship grants under section 117, but are compensatory and includible in the employees' gross income, constitute wages for purposes of the FICA, FUTA, and income tax withholding. Rev. Rul. 76–352 amplified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 117, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–184, 1978–1 C.B. 304.

140.64 Employer payments to vacation trust fund. Amounts paid by a employer to a trust forming a part of his employees' vacation plan, where such amounts are constructive payments of compensation and thus employee contributions, are deductible under section 162 and not under section 404(a)(5). These amounts are taxable to the employees for the taxable year in which paid to the trust and are wages subject to employment taxes at the time paid. Rev. Rul. 57–316 distinguished. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 67–351, 1967–2 C.B. 86.

140.65 Erroneous salary payments; Federal employee. Erroneous salary payments to Federal employees, the collection of which is waived by law, must be reflected in the employees' Form W–2 for the year such erroneous payment is made to the extent there has been no repayment of such amount by the employees within that year. Further, where such amount has been repaid and later refunded to the employees, it is not again subject to withholding of income tax. This will not be applied to require any employer agency to correct a Form W–2 for any year prior to 1969 under certain conditions. §§31.3402(a)–1, 31.6011(a)–4, 31.6051–1, 301.7805–1. (Secs. 3402, 6011, 6051, 7805; '54 Code.)

Rev. Rul. 70–177, 1970–1 C.B. 214.

140.66 Excess distribution; health and welfare fund. Cash payments, other than health and welfare benefits, distributed annually by a labor union from its health and welfare fund to employees of contributing employers are wages. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1, 31.3504–1. (Secs. 3121, 3306, 3401, 3504; '54 Code.)

Rev. Rul. 70–51, 1970–1 C.B. 192.

140.67 Failure to deposit; penalty. Examples illustrate the application of the penalty for failure to deposit employer and employee FICA and income taxes in situations where an employer (1) did not withhold or make deposits, (2) made timely deposits of taxes withheld on only a portion of the remuneration paid, and (3) withheld taxes but either did not deposit or was late in depositing. §§31.6302(c)–1, 301.6651–1, 301.6652–1, 301.6653–1, 301.6656–1, 301.6672–1. (Secs. 6302, 6651, 6652, 6653, 6656, 6672; '54 Code.)

Rev. Rul. 75–191, 1975–1 C.B. 376.

140.68 Failure to withhold tax or file return. An employer that inadvertently fails to deduct and withhold income taxes may make an interest-free adjustment if the employer files timely supplemental returns reporting the underpayment and the employee files an income tax return and pays the tax due. Rev. Rul. 58–577 modified. §§31.3402(d)–1, 31.6205–1, 301.6601–1. (Secs. 3402, 6205, 6601; '54 Code.)

Rev. Rul. 86–10, 1986–4 I.R.B. 7.

140.69 Failure to withhold tax or file return. Interest is assessable against an employer who fails to deduct and withhold tax from the wages of an employee as required by section 3402, even though the employee subsequently files an income tax return and satisfies his income tax liability. Modified to provide that where a delinquency penalty is to be assessed against an employer under section 6651 for failure to file the required quarterly tax return and the provisions of section 3402(d) are applicable, such penalty should be computed from the due date of the return to the date it is filed. §§31.3402(d)–1, 301.6601–1, 301.6651–1. (Secs. 3402, 6601, 6651; '54 Code.)

Rev. Rul. 58–577, 1958–2 C.B. 744; Rev. Rul. 66–113, 1966–1 C.B. 244.

140.70 False Form W–4 information. An employer must request another Form W–4, Employee's Withholding Allowance Certificate, from an employee who indicates, other than on Form W–4, on or before the date on which the employee furnishes a Form W–4 to the employer, that the name, address, social security number, or number of exemptions shown on the employee's Form W–4 is false. If the employee fails to provide a valid Form W–4, the employer must withhold income tax from the employee as from a single person claiming no exemptions. §31.3402(f)(2)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 80–68, 1980–1 C.B. 225.

140.71 Federal Prison Inmates. Prison inmates who perform services for Federal Prison Industries, Inc. are not employees for purposes of income tax withholding. §31.3401(c)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 75–325, 1975–2 C.B. 415.

140.72 Ferry company employees. A ferry company created and owned jointly by one county and a city in the same State is an instrumentality wholly owned by one or more political subdivisions of the State. Therefore, services performed in the employ of the company are excepted from employment for FICA and FUTA purposes; however, remuneration for such services is subject to income tax withholding. S.S.T. 74 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–106, 1968–1 C.B. 423.

140.73 FICA; paid by employer without deduction from employee's wages. Payments by an employer of employee FICA tax without deduction from employee's wages under an agreement between them are additional wages for FICA purposes, the amount of wages to be determined by a formula. The additional FICA wages so determined are includible in the employee's gross income and are wages for purposes of income tax withholding. If otherwise appropriate, the employer may deduct the payments as ordinary and necessary business expenses under section 162. Rev. Rul. 74–75 modified. §§31.3101–1, 31.3306(b)(6)–1, 31.3401(a)–1, 31.6051–1, 31.6413(c)–1. (Secs. 61, 162, 3101, 3306, 3401, 6051, 6413; '54 Code.)

Rev. Rul. 86–14, 1986–5 I.R.B. 33.

140.74 FICA; tax paid by employer without deduction from wages. Payment by an employer of employee FICA tax without deduction from the employee's wages under an agreement between them constitutes "wages" for purposes of income tax withholding; however, for purposes of the FICA, no additional tax is applicable to the employee tax liability incurred by the employer. Also, if the employee has two or more employers he is entitled to the special refund of excess tax paid on an amount exceeding the maximum annual wage limitation. §§31.3101–1, 31.3102–1, 31.3121(a)(1)–1, 31.6413(c)–1. (Secs. 3101, 3102, 3121, 3401, 6413; '54 Code.)

Rev. Rul. 74–75, 1974–1 C.B. 19.

140.75 Foreign employees. Separate monthly payments by a domestic corporation to its U.S. citizen-employees working overseas, one made in the U.S. and the other in a foreign country and subject to that country's income tax withholding, are wages for purposes of income tax withholding only with respect to those payments made in the U.S. that exceed the amounts excludable under section 911 of the Code. §31.3401(a)–1. (Secs. 911, 3401; '54 Code.)

Rev. Rul. 75–485, 1975–2 C.B. 414.

140.76 Foreign entertainers; "single loan-out" and "double loan-out" arrangements. Examples illustrate the tax consequences, under various sections of the Code and the U.S.—United Kingdom Income Tax Convention, of contracts between a U.S. person and a United Kingdom corporation for the performance of services by a foreign entertainer, sometimes referred to as "single loan-out" arrangements, and of contracts between a Channel Islands corporation, a United Kingdom corporation, and a U.S. person for the performance of services by a foreign entertainer, sometimes referred to as "double loan-out" arrangements. §§31.3401(a)(6)–1, 31.3402(a)–2. (Secs. 61, 482, 543, 861, 864, 871, 882, 1442, 3401, 3402; '54 Code.)

Rev. Rul. 74–330, 1974–2 C.B. 278; Rev. Rul. 74–331, 1974–2 C.B. 281.

140.77 Foreign source earned income; treaties; nondiscrimination clause; resident aliens. Resident aliens from Canada, Denmark, the Netherlands, and the United Kingdom qualify for the exclusion of earned income under section 911(a)(2) of the Code to the same extent as U.S. citizens under nondiscrimination clauses in applicable tax treaties. Amplified to include other listed countries. §31.3401(a)(8)(A)–1. (Secs. 911, 3401; '54 Code.)

Rev. Rul. 72–330, 1972–2 C.B. 440; Rev. Rul. 72–598, 1972–2 C.B. 451.

140.78 Foreign students. A foreign student in the U.S. for the purpose of advanced training in nursing at a hospital for a period of at least two years, who as part of his training performs part-time services as an employee of the hospital and receives remuneration from the hospital for the services, will be classified as a nonresident alien and his services are excepted from employment for FICA and FUTA purposes. However, his remuneration is subject to income tax withholding; the student is treated as a resident alien under the provisions of Rev. Rul. 54–87, which is amplified to be made applicable to income tax withholding. §§31.3121(b)(19)–1, 31.3306(c)(18)–1, 31.3401(a)(6)–1, 31.3402(a)–1, 31.3402(f)(6)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 67–159, 1967–1 C.B. 280.

140.79 Foster parents. Factual situations illustrate the tax treatment of amounts received and amounts expended by individuals providing foster care to children. I.T. 4068 superseded. §§1.1401–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 61, 62, 151, 162, 170, 280A, 1401, 3121, 3306, 3401, 6041; '54 Code.)

Rev. Rul. 77–280, 1977–2 C.B. 14.

140.80 Grand and subordinate fraternity lodges. The Grand lodge and each subordinate lodge of a fraternity must report and pay and taxes imposed under FICA and FUTA as well as income tax withheld from wages of the employees. S.S.T. 76 superseded. §§31.3121(d)–2, 31.3306(a)–1, 31.3401(d)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–273, 1968–1 C.B. 436.

140.81 Handyman and gardener; hospital rehabilitation program. The owner of a private residence who engages a patient of a hospital under its rehabilitation program as a handyman and gardener and who furnishes the necessary equipment, has the right to instruct the patient as to what services to perform and the manner in which to perform them, is the employer of the patient for FICA purposes. The services performed are domestic services, and the remuneration therefor is not subject to income tax withholding or the tax under the FUTA. However, remuneration for such services is includible in the patient's gross income. Distinguished by Rev. Rul. 66–288 to provide that the value of meals and lodging provided such a patient is not includible in gross income. §§31.3121(d)–1, 31.3306(c)(2)–1, 31.3401(a)(3)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–149, 1960–1 C.B. 393.

140.82 Health benefit payments; includible in gross income of laid-off worker under section 105(a). A laid-off worker is an "employee" during the period of layoff for purposes of an accident or health plan described in sections 105 and 106. Employer contributions to the plan are excludable from the worker's gross income. Benefits received are includible in the worker's gross income and are subject to withholding. §31.3401(a)–1. (Secs. 105, 106, 3401; '54 Code.)

Rev. Rul. 85–121, 1985–32 I.R.B. 5.

140.83 Hospital and surgical insurance paid by employer. Premiums paid by an employer under policies providing hospital and surgical services under a plan for its employees not under its health and welfare plan covering union employees do not constitute income to such employees and are not subject to income tax withholding. (Sec. 3402, '54 Code.)

Rev. Rul. 56–632, 1956–2 C.B. 101.

140.84 Injunction prohibiting assessment and collection. A court may not enjoin the Revenue Service from enforcing the withholding provisions of section 3402 of the Code against an employer, a religious corporation, that in response to the employees' request ceased withholding from

the employees' salaries a percentage of the required withholding which the employees, who wish to bear witness to their religious beliefs, contend represents the percentage of the Federal budget allocated to military expenditures. §31.3402(a)–1. (Secs. 3402, 7421; '54 Code.)

American Friends Service Committee, 419 U.S. 7, Ct. D. 1968, 1975–1 C.B. 377.

140.85 Insurance salesmen; noncash remuneration. Individuals employed as insurance salesmen are not retail commission salesmen as contemplated by section 3402(j); therefore, their employers are required to deduct and withhold income tax with respect to noncash remuneration paid such individuals. §31.3402(j)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 57–551, 1957–2 C.B. 707.

140.86 Interest, dividends, or patronage dividends; verification of taxpayer identification numbers. Payers of interest dividends, patronage dividends, and brokers may identify incorrect Social Security Numbers of payees by submitting magnetic tape files to the Service provided certain requirements are met. (Sec. 601.103, S.P.R.; Secs. 3406, 6676, '54 Code.)

Rev. Proc. 84–10, 1984–1 C.B. 406.

140.87 Irregular employees; frequent small payments. A motor freight carrier, required by local employment conditions in certain areas to engage members of local unions to unload trucks at delivery points on an irregular basis but under circumstances which constitute them employees of the company, is required to deduct and withhold income and employee taxes, irrespective of the frequency and small amounts of the individual wage payments. §31.3102–1. (Secs. 3102, 3402, '54 Code.)

Rev. Rul. 57–12, 1957–1 C.B. 353.

140.88 Legal fees and interest; awarded with back pay. The portion of a court-approved back-pay settlement between a union and a company that is used to pay legal fees incurred in enforcing a collective bargaining agreement on behalf of union members is not wages to the members. Likewise, the portion of back-pay award that is specified for legal fees and interest in connection with a claim against an individual's employer is also excludable from wages. However, the full amount of a similar award that does not specify that a part of the award is for legal fees is wages, even if the individual uses a portion of the award to pay attorney's fees. §§31.3121(a)–1, 31.3306(b)1, 31.3401(a)–1. (Sec. 61, 162, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 80–364, 1980–2 C.B. 294.

140.89 Liability to withhold. An employer may not withhold less than is required by section 3402, even though he knows that the employee's income tax liability may be less than the amount of tax required to be withheld. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 60–220, 1960–1 C.B. 399.

140.90 Liability to withhold; Amish employer. A person of the Old Order Amish religious faith who employs other Amish to work on his farm and in his carpenter shop is required to file quarterly social security tax returns, withhold social security taxes from his employees, and pay the employer's share of social security taxes. The FICA tax is not an unconstitutional infringement upon freedom of religion. (Sec. 3102, '54 Code.)

Lee, 455 U.S., Ct D. 2011, 1982–1 C.B. 148.

140.91 Liability to withhold; small business corporation; shareholder. Dividends that two sole shareholders of an electing small business corporation arranged to receive instead of reasonable compensation in the same amounts for services they performed constituted "wages" for which the corporation was liable for the taxes imposed by the FICA and the FUTA and the withholding of income tax. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 1371, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–44, 1974–1 C.B. 287.

140.92 Liability to withhold; trustee in bankruptcy; priority. A trustee in bankruptcy is obligated to withhold, report, and pay over income and Social Security taxes from payment of priority claims for employee's wages earned prior to, but unpaid at the time of, an employer's bankruptcy. Proofs of claim on the part of the U.S. with respect to the taxes are not required and the taxes are entitled to second priority of payment under section 64(a) of the Bankruptcy Act. §§31.3102–1, 31.3402(a)–1. (Secs. 3102, 3402, 6011; '54 Code.)

Otte, 419 U.S. 43, Ct. D. 1969, 1975–1 C.B. 329.

140.93 Liability to withhold income tax; payors of interest and dividends; exemption. Payors of interest and dividends are exempted from the withholding requirements in sections 3451 through 3456, because of undue hardship, for amounts paid or accrued from July 1 through July 31, 1983.

Notice 83–13, 1983–2 C.B. 413.

140.94 Liability to withhold income tax; waiver; payors of interest and dividends. Situations are illustrated in which payors of interest, dividends, and patronage dividends may be granted temporary waivers from the withholding requirements of section 3451(a) because of undue hardship. §31.3451(a)–1. (Sec. 3451, '54 Code.)

Rev. Rul. 83–55, 1983–1 C.B. 240.

140.95 Liability to withhold income tax; waiver; payors of interest and dividends; guidelines. Guidelines are provided for persons responsible for withholding tax on interest, dividends, and patronage dividends who wish to request a temporary waiver of the withholding requirements under section 3451 because of undue hardship. (Sec. 601.104, S.P.R.)

Rev. Proc. 83–20, 1983–1 C.B. 678.

140.96 Lifetime services assigned to trust. A corporation's employee assigned "lifetime services" to a trust, and the trust contracted to provide services to the corporation for a monthly fee equal to what otherwise would be the employee's gross monthly salary. The employee continued to perform the same tasks for the corporation, under the same conditions, and with the same amount of control as before the assignment. The corporations's payments under the contract are wages for purposes of the FICA and income tax withholding. §§31.3101–1, 31.3111–1, 31.3401(c)–1, 31.3402(a)–1. (Secs. 61, 3101, 3111, 3401, 4302; '54 Code.)

Rev. Rul. 80–321, 1980–2 C.B. 33.

140.97 Lodging and allowance for groceries provided by employer. The value of lodging in a home furnished without charge by an exempt religious organization to its full-time representatives who are required to accept the lodging as a condition of employment and as the primary place for performing their duties, an allowance for groceries with which meals are prepared, and salaries of over $50 per quarter paid to the representatives, for whom coverage under the FICA has been elected by the organization, are wages for FICA purposes. The salaries and grocery allowance are also subject to income tax withholding. Modified by Rev. Rul. 81–222. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 119, 3121, 3401; '54 Code.)

Rev. Rul. 77–80, 1977–1 C.B. 36.

140.98 Lump-sum readjustment payments; Armed Forces reserves. Lump-sum readjustment payments pursuant to section 265 of the Armed Forces Reserve Act of 1952, as amended, received by members of a reserve component are includible in their gross income and are subject to income tax withholding. (Secs. 61, 3402; '54 Code.)

Rev. Rul. 57–164, 1957–1 C.B. 26.

140.99 Maintenance and cure payments; disabled seamen. Regular salary payments made to seamen who become disabled in the service of their ships are wage continuation payments excludable from gross income, and constitute wages for employment tax purposes. However, if certain conditions specified in section 31.3401(a)–1(b)(8)(ii)(b) of the regulations are met, withholding of income tax is not required. "Maintenance and cure" payments, including cash subsistence payments while an out-patient, do not constitute compensation for services, are not taxable income, and do not constitute wages. I.T. 3977 amplified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 60–219, 1960–1 C.B. 383.

140.100 Meals; allowance; one day trips. Amounts paid to an employee as reimbursements for meals on business trips away from home not requiring a stop for sleep or rest are not subject to income tax withholding unless it is reasonable to believe the employee's total per diem allowances during the taxable year will exceed his deductible travel expenses. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 69–592, 1969–2 C.B. 193.

140.101 Meals; reimbursements; state policemen. Amounts paid to members of the state police as reimbursement or allowances for the cost of meals while on daily patrol duty or on other regular duty assignments and while not in a travel status are subject to the withholding of income tax. (See Wilson, 412 F. 2d 694, Ct. D. 1930, 1970–1 C.B. 27, which holds that amounts paid to state policemen while on daily duty for costs of meals incurred more than ten miles away from home are includible in gross income.) §§31.3401(a)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 70–85, 1970–1 C.B. 214.

140.102 Meals; valuation. Factors determining the value to be placed upon meals furnished to employees as part of their compensation are set forth. S.S.T. 51 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–321, 1968–1 C.B. 415.

140.103 Meals; valuation. Although the valuation specified by State laws or regulations for meals furnished by an employer to employees as part of their compensation is taken into consideration in determining the value of such meals for purposes of Federal employment taxes, it is not exclusively determinative and must be considered in conjunction with other relevant factors. Rev. Rul. 68–321 clarified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 76–148, 1976–1 C.B. 310.

140.104 Meals and lodging. The value of meals and lodging that is not excludable from an employee's gross income under section 119 is wages under sections 3121(a), 3306(b), and 3401(a). Rev. Ruls. 57–471, 62–150, 68–322, 71–290, and 80–41 revoked and Rev. Ruls. 54–593, 55–630, 55–631, 71–411, 72–385, and 77–80 modified. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 81–222, 1981–2 C.B. 205.

140.105 Meals and lodging. An employer is not required in 1954 to withhold income tax on the value of meals and lodging if such value is clearly excludable from the employee's gross income under section 119. Modified by Rev. Rul. 81–222. (Sec. 3402, '54 Code.)

Rev. Rul. 54–593, 1954–2 C.B. 31.

140.106 Meals and lodging; allowances. An employer supplying temporary manpower may not in all cases rely solely upon an employee's certification that he was working away from his permanent residence as a basis for excluding from wages allowances paid for meals and lodging. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 71–551, 1971–2 C.B. 354.

140.107 Meals and lodging; allowances; railroad employee. Fully accounted for allowances for travel expenses a railroad pays to an employee, whose round trip service is of a duration and nature requiring release from duty to obtain substantial sleep or rest, are neither compensation for RRTA purposes nor wages for income tax withholding; but, if not accounted for, they are compensation for RRTA purposes. However, allowances, if paid for shorter trips not requiring sleep or rest, for which no expense is incurred and no accounting made are compensation for RRTA purposes and subject to income tax withholding. §§31.3231(e)–1, 31.3401(a)–1. (Secs. 3231, 3401; '54 Code.)

Rev. Rul. 75–279, 1975–2 C.B. 409.

140.108 Mexican workers. Payments made to Mexican Nationals brought to the U.S. under Title V of the Agricultural Act of 1949, as amended, for services performed as cooks, waiters, and maintenance men in connection with the housing and feeding of field workers, under circumstances which do not constitute such services as agricultural labor, are subject to income tax withholding. (Secs. 3401, 6401; '54 Code.)

Rev. Rul. 56–679, 1956–2 C.B. 782.

140.109 Ministers; hospital chaplains. Rules for determining whether a minister serving as a hospital chaplain at church-related hospitals and health and welfare institutions, non-church-related private nonprofit hospitals, and government hospitals is performing services in the exercise of his ministry for purposes of the FICA, income tax withholding, and self-employment tax. Distinguished by Rev. Rul. 71–337. §§1.1402(c)–5, 31.3121(b)(6)–1, 31.3121(b)(7)–1, 31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 71–258, 1971–1 C.B. 283.

140.110 Ministers; industrial chaplains. Services performed by an ordained minister as an industrial chaplain that do not involve the conduct of religious worship or the ministration of sacerdotal functions are not in the exercise of his ministry for purposes of the FICA and income tax withholding. Rev. Rul. 71–258 distinguished. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 71–337, 1971–2 C.B. 342.

140.111 Ministers; outside employment. Ordinary nonreligious services performed for a manufacturing company on the company's assembly line by an ordained minister, who had worked several years for the company prior to receiving written instructions from the church to do so, are not "in the exercise of his ministry," and the remuneration received for the services is not excepted from income tax withholding. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 78–229, 1978–1 C.B. 305.

140.112 Ministers; voluntary plan. Voluntary plans for withholding income tax from a minister's salary cannot be approved by the Service; further amounts paid by a church toward its minister's personal tax obligations are includible in his gross income for income and self-employment tax purposes. §§1.1401–1, 31.3402(a)–1. (Secs. 1401, 3402; '54 Code.)

Rev. Rul. 68–507, 1968–2 C.B. 485.

140.113 Motion picture profits; artists, producers, and directors. Amounts paid to artists, producers, and directors under a profit sharing agreement with a motion picture company whereby in addition to their salary they receive a percentage of the profits, if any, derived by the company from a motion picture produced by the performance of their services are wages at the time they are actually or constructively paid even if an employment relationship no longer exists. S.S.T. 263 superseded. §§31.3121(a)–1, 31.3121(a)–2, 31.3301–4, 31.3306(b)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3301, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 72–119, 1972–1 C.B. 312.

140.114 Moving expenses. Payments or reimbursements to employees for moving expenses are excepted from wages for employment tax purposes, although includible in gross income under section 82, if it is reasonable to believe a corresponding deduction is allowable under section 217. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 70–482, 1970–2 C.B. 200.

140.115 Moving expenses; dislocation or trailer allowances. The dislocation or trailer allowance received by a member of the uniformed services in connection with a change in duty station is includible in the gross income of the recipient under section 82 of the Code. However, such allowances are excepted from wages for purposes of income tax withholding unless the employer at the time of payment has reason to believe a corresponding deduction is not allowable under section 217. Rev. Rul. 65–158 modified. §31.3401(a)–1. (Secs. 82, 217, 3401; '54 Code.)

Rev. Rul. 75–362, 1975–2 C.B. 413.

140.116 Moving expenses; reimbursement; citizen employed abroad by domestic employer. Examples set forth the income tax withholding requirements with respect to moving expense reimbursements to U.S. citizen employees transferring to or returning from foreign countries and a portion of whose income was excludable under section 911 of the Code. §31.3401(a)(8)(A)–1. (Secs. 82, 217, 911, 3401, '54 Code.)

Rev. Rul. 75–84, 1975–1 C.B. 236.

140.117 Moving expenses; reimbursement of loss on sale of personal residence. Reimbursements received by Federal civilian employees or members of the Armed Forces from the Government for losses sustained on the private sale of personal residences, or the excess over fair market value at the time of the sale resulting from Government purchases of the residences, as the result of the closing of a military base are "wages" for purposes of the FICA and income tax withholding, unless specifically excepted. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 82, 1034, 3121, 3122, 3401; '54 Code.)

Rev. Rul. 76–342, 1976–2 C.B. 22.

140.118 Moving expenses; related expenses. Allowances or reimbursements paid by an employer to or on behalf of an employee transferred from one official station to another for permanent duty, for expenses related to the move, but which are not actual transportation expenses of moving the employee, his immediate family, household goods, and personal effects are wages for purposes of employment taxes. (Sec. 3401, '54 Code.)

Rev. Rul. 65–158, 1965–1 C.B. 34.

140.119 National Teaching Fellowships. Stipends and dependency allowances received by college faculty members who are awarded National Teaching Fellowships under Title III of Pub. L. 89–329, the Higher Education Act of 1965, are not excludable from gross income. Such amounts represent compensation for services rendered and are wages subject to income tax withholding. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 68–146, 1968–1 C.B. 58.

140.120 New Form W–4 information; repayment or reimbursement. An employer may not repay or reimburse an employee for income taxes withheld during the year merely because the employee furnishes a new Form W–4 to the employer claiming additional exemptions or exemption from withholding. §§31.3402(f)(2)–1, 31.6413(a)–1. (Secs. 3402, 6413; '54 Code.)

Rev. Rul. 82–84, 1982–1 C.B. 208.

140.121 Nonresident aliens; Australian convention. The remuneration received for services performed within the U.S. for an Australian employer by a nonresident alien who is a resident of Australia, and who is not present in the U.S. for a period or periods exceeding in the aggregate 183 days during the taxable year, is excepted from withholding provided the alien files with the employer the statement described in section 31.3401(a)(6)–1(e) of the regulations. §§31.3401(a)(6)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 76–381, 1976–2 C.B. 311.

140.122 Nonresident aliens; exemptions. A nonresident alien employee, not a resident of Canada, Mexico, or Puerto Rico, whose wages are subject to income tax withholding is entitled to only one withholding exemption for purposes of computing the amount of income tax to be withheld notwithstanding the provisions of section 3402(m)(3)(E). §31.3402(f)(6)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 69–454, 1969–2 C.B. 193.

140.123 Nonresident aliens; journalists and newspaper correspondents. Wages for services performed within the U.S. by nonresident aliens as journalists and newspaper correspondents for a foreign news service in excess of 90 days during the taxable year or for a domestic newspaper publishing company are subject to FICA tax at the rate provided in section 3101 and to withholding of income tax at the graduated rates provided in section 3402. §§31.3121(b)–3, 31.3401(a)(6)–1, 31.3402(a)–1. (Secs. 3121, 3401, 3402; '54 Code.)

Rev. Rul. 71–125, 1971–1 C.B. 358.

140.124 Nonresident aliens; physicians; VA hospital. A VA hospital that has substantial activity in the area of education, maintains an association with a State university, and teaches interns, residents in post-graduate training, and medical students enrolled at the university, but does not maintain a regular faculty or curriculum or a regularly organized student body, is not an educational institution for purposes of Article XVIII of the U.S.—United Kingdom Income Tax Convention. The salary paid by the hospital to a U.K. citizen employed for less than two years as a staff physician in a teaching and research capacity while simultaneously teaching at the university is subject to withholding under section 3402 of the Code. §§31.3401(a)(6)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 74–484, 1974–2 C.B. 342.

140.125 Nonresident aliens; refund. The income tax withheld from wages paid after De-

cember 31, 1966, to nonresident alien employees for services performed within the U.S. cannot be refunded by the employer. The nonresident alien employee must file a timely return, Form 1040NR, to obtain a refund. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 69–29, 1969–1 C.B. 273.

140.126 Nonstatutory employee stock option; cancellation. The amount an employee receives upon cancellation by his employer of a nonstatutory stock option, the fair market value of which was not readily ascertainable at the time of grant, is includible in the gross income of the employee as compensation for services in the year received. The amount received is subject to income tax withholding. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 67–366, 1967–2 C.B. 165.

140.127 Nonstatutory employee stock option; exercise. When an employee exercises a stock option to which section 421 does not apply, the excess of fair market value of the stock over the option price is wages subject to income tax withholding. §§31.3401(a)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 67–257, 1967–2 C.B. 359.

140.128 Nutrition Program for the Elderly; employees. Cash remuneration paid to employees under the Nutrition Program for the Elderly is "wages" for FICA and income tax withholding purposes. Food benefits received by employees under the program are not "wages." §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 3121, 3401; '54 Code.)

Rev. Rul. 79–342, 1979–2 C.B. 219.

140.129 Orchestra leaders and members. Examples are set forth to update and restate the rules for determining the status of orchestra leaders and members under the current statute and regulations for employment and self-employment tax purposes. Mims. 6187 and 6284 superseded. Mims. 4651 and 5638; S.S.Ts. 47, 324 and 375 obsoleted. §§1.1402(c)–1, 31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 1402, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 68–107, 1968–1 C.B. 427.

140.130 Part-time inspection services; railway company. A U.S. citizen, principally engaged in the operation of his own grocery store, who furnishes his own equipment and receives a monthly salary for performing services at the Canadian border for a short time each day for a railway company, an employer as defined by the RRTA, in tasks related to U.S. Customs inspection of freight cars that are normally performed by the railway company's regular employees at other border checkpoints, is an employee of the railway company for purposes of the RRTA and income tax withholding. §§31.3231(b)–1, 31.3401(c)–1. (Secs. 3231, 3401; '54 Code.)

Rev. Rul. 74–494, 1974–2 C.B. 340.

140.131 Pay; Coast Guard Academy cadet. The statutory pay of a cadet of the United States Coast Guard Academy is includible in his gross income and subject to withholding of income tax in the year it is received by the Superintendent, or a subordinate, as his agent. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 62–122, 1962–2 C.B. 12.

140.132 Payments after retirement; dividend units. A company has a plan under which managerial employees receive awards in the form of "dividend units" that entitle an employee to cash payments equal to dividends paid on stock as long as employed or after retirement. Such payments to retired employees are excludable from wages under sections 3121(a)(13) and 3306(b)(10), but are wages under section 3401(a). §§31.3121(a)(13)–1, 31.3306(b)(10)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 79–328, 1979–2 C.B. 351.

140.133 Payments by state of employees' tax. Amounts paid by a state under an agreement with H.E.W. or by a domestic corporation under an agreement with the Service extending social security coverage to state employees or to employees of a foreign subsidiary of the domestic corporation, which are equivalent to the FICA tax that would have been imposed on the employees under section 3101, are includible in the employees' gross income and are wages subject to income tax withholding. §§31.3121(l)(1)–1, 31.3402(d)–1. (Secs. 61, 3121, 3402; '54 Code.)

Rev. Rul. 79–49, 1979–1 C.B. 57.

140.134 Payments under Domestic Volunteer Service Act. Payments for supportive services or reimbursements of out-of-pocket expenses made to volunteers serving in programs pursuant to titles II and III of the Domestic Volunteer Service Act of 1973 are not wages for FICA and income tax withholding purposes. Amplified by Rev. Rul. 78–80. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 3121, 3401; '54 Code.)

Rev. Rul. 74–322, 1974–2 C.B. 17.

140.135 Payments under Domestic Volunteer Service Act; Foster Grandparent Program. Supplemental stipends paid by sponsoring state agencies to volunteers in the Foster Grandparent Program in addition to the monthly stipend paid from Federal funds for the volunteers' services, both of which are authorized pursuant to title II of the Domestic Volunteer Service Act of 1973, are not wages for purposes of the FICA and income tax withholding. Rev. Rul. 74–322 amplified. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 3121, 3401; '54 Code.)

Rev. Rul. 78–80, 1978–1 C.B. 22.

140.136 Penalties; failure to pay over; subsequent corporate officer. An individual who assumes control of corporate affairs when no funds are available to satisfy previously incurred withholding tax obligations and uses subsequent funds for purposes other than the payment of the overdue taxes is not liable for the penalty imposed by section 6672. (Secs. 6672, 7501; '54 Code.)

Slodov, 436 U.S. 238, Ct. D. 1993, 1978–2 C.B. 327.

140.137 Pension based on excepted services. A pension paid to a retired employee whose remuneration for services performed prior to his retirement was specifically excluded from the term wages is not subject to income tax withholding. §406.208. (Sec. 1621, '39 Code; Sec. 3401, '54 Code.)

Rev. Rul. 54–122, 1954–1 C.B. 223.

140.138 Per diem allowance; exeucutive training program participant; home test. An employee who participated in a 12-month executive training program at various offices throughout the country pending reassignment in a new location was away from home, and a per diem allowance paid by the employer not wages subject to income tax withholding. §31.3401(a)–1. (Secs. 162, 274, 3401; '54 Code.)

Rev. Rul. 80–212, 1980–2 C.B. 58.

140.139 Political organization employees. A committee of a political organization is liable for the Federal employment taxes, including withholding of income tax, with respect to the wages paid to its employees. S.S.T. 6 superseded. §§31.3121(b)–3, 31.3306(c)–2, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–190, 1968–1 C.B. 422.

140.140 Preretirement leave plan. Payments to employees under a negotiated preretirement leave plan based on years of employee service and age which was established to introduce and accustom eligible employees to permanent retirement gradually, constitute wages for purposes of the FICA, FUTA, and income tax withholding. §§31.3121(a)–1, 31.3121(a)(9)–1, 31.3306(b)–1, 31.3306(b)(8)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–461, 1975–2 C.B. 394; Rev. Rul. 79–111, 1979–1 C.B. 318.

140.141 Preretirement leave plan. Payments made by a company to eligible employees under a negotiated preretirement leave benefit plan that (1) was adopted to offset layoffs resulting from periodic slack seasons, (2) provides benefits whether or not an actual need for a layoff ever occurs, and (3) guarantees benefits at the time leave is scheduled, are wages. Rev. Ruls. 56–249 and 60–330 distinguished and Rev. Rul. 75–461 amplified. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 80–124, 1980–1 C.B. 212.

140.142 Prizes; commission salesmen. Cash prizes and the cash value of prizes paid in any medium other than cash to retail commission salesmen or their wives are wages subject to FICA and FUTA. The cash prizes also are wages subject to income tax withholding and the cash value of prizes paid in any medium other than cash are subject to income tax withholding unless, under the regulations, the employer elects to disregard them. S.S.T. 29 and Rev. Rul. 55–232 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1, 31.3402(j)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 68–216, 1968–1 C.B. 413.

140.143 Proceeds of lottery sponsored by exempt organization. In addition to the normal information reporting requirements of section 6041, an organization exempt from tax under section 501(c)(3) is also subject to the withholding requirements of section 3402(q)(1) if the organization pays lottery winnings of more than $1,000. §31.3402(q)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 85–46, 1985–1 C.B. 334.

140.144 Proficiency awards; Army nurses. Awards received by Army nurses, selected by senior officers of a certain Army hospital for their meritorious service, from a fund contributed to the Department of the Army by a private individual for that purpose, are wages subject to income tax withholding. Such awards are amounts received from their employer and are includible in gross income. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 67–89, 1967–1 C.B. 20.

140.145 Public power district employees; Nebraska. Services performed by the employees of a public power district organized under Nebraska law are excepted from employment for purposes of the FICA and FUTA; however, the remuneration for such services is subject to income tax withholding. S.S.T. 94 superseded. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 68–171, 1968–1 C.B. 425.

140.146 Puerto Rican fisherman. Remuneration paid for fishing services performed on the high seas or in the territorial waters of the U.S. by employees who are residents of Puerto Rico and who are citizens of both Puerto Rico and the U.S. are subject to income tax withholding for the U.S. (Sec. 3402, '54 Code.)

Rev. Rul. 57–236, 1957–1 C.B. 355.

140.147 Railroad car cleaner. An independent cleaning and general maintenance contractor, who is engaged to clean rail cars at a small outlying company-owned yard by a railroad company that uses its regular employees to clean cars at larger yards, is an employee of the company for RRTA purposes, but not for income tax withholding purposes. §§31.3231(b)–1, 31.3401(c)–1. (Secs. 3231, 3401; '54 Code.)

Rev. Rul. 74–355, 1974–2 C.B. 339.

140.148 Railroad station caretaker-cleaner in Canada. A citizen and resident of the U.S. performing services as a caretaker-cleaner of a railroad station in Canada, operated jointly by the Canadian National Railway and a U.S. company that conducts the principal part of its business in the U.S. and that pays the caretaker's salary, furnishes his supplies and equipment, supervises his work, and may terminate his services at any time, is an employee of the U.S. company for purposes of the RRTA and income tax withholding. §§31.3231(b)–1, 31.3401(c)–1. (Secs. 3231, 3401; '54 Code.)

Rev. Rul. 74–438, 1974–2 C.B. 339.

140.149 Reduced salary; reemployed civil service annuitant. The salary received by a reemployed civil service annuitant after an amount equal to the annuity allocable to the actual employment period was deducted as prescribed by law is wages for purposes of income tax withholding. §31.3401(a)–1. (Secs. 61, 3401; '54 Code.)

Rev. Rul. 79–1, 1979–1 C.B. 60.

140.150 Refugee admitted to U.S. Amounts paid as wages for services performed in employment by a Hungarian refugee, who entered the U.S. under an immigration visa or as a parolee under the Immigration and Nationality Act, are subject to the FICA and income tax withholding. §31.3102–1. (Secs. 3102, 3402; '54 Code.)

Rev. Rul. 57–331, 1957–2 C.B. 11.

140.151 Religious order members; earnings remitted to order; vow of poverty. Compensation received by a member of a religious order under vows of poverty and obedience, for services performed as a school teacher in a secular private school that is exempt from income tax under section 501(c)(3), is includible in the member's gross income and subject to income tax withholding. Rev. Rul. 68–123 clarified and distinguished. §31.3401(a)(9)–1. (Secs. 61, 3401; '54 Code.)

Rev. Rul. 83–127, 1983–2 C.B. 25.

140.152 Religious order members; outside earnings remitted to order. Amounts received by members of an exempt religious order, not acting as agents of the order, for work performed outside the religious community and paid over, in full or part, to the order, at its direction, are subject to the FICA and income tax withholding. Clarified by Rev. Rul. 77–290. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 61, 170, 3121, 3401; '54 Code.)

Rev. Rul. 76–323, 1976–2 C.B. 18.

140.153 Religious order or organization members; outside earnings remitted to order or organization. Remuneration remitted to a religious organization or order by a member who has taken a vow of poverty and is instructed by superiors to obtain outside employment is subject to FICA and income tax withholding. Remuneration remitted to the organization or order by another member who has taken a vow of poverty and is instructed to perform services in the business office of the supervising church is not subject to FICA or income tax withholding. O.D. 119 superseded and Rev. Rul. 76–323 clarified. §§31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 61, 501, 511, 3121, 3401; '54 Code.

Rev. Rul. 77–290, 1977–2 C.B. 26; Rev. Rul. 79–132, 1979–1 C.B. 62; Rev. Rul. 80–332, 1980–2 C.B. 34.

140.154 Religious organization members; paid by organization. Small remuneration paid by a religious organization to its members for work they performed pursuant to contracts between the organization and third parties constitute wages for purposes of the FICA and income tax withholding but the contract amounts paid to the organization are not includible in the members' gross income. §§31.3121(a)–1, 31.3401(a)–1. (Secs. 61, 511, 512, 513, 3121, 3401; '54 Code.)

Rev. Rul. 76–341, 1976–2 C.B. 307.

140.155 Research grants; cancer. Grants for Cancern Research made by the American Cancer Society to specified individuals to aid them to acquire independent experience in cancer research beyond that usually obtained through postdoctoral training are excludable from gross income as fellowship grants and are not wages subject to income tax withholding. Rev. Rul. 57–127 distinguished. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 60–130, 1960–1 C.B. 46.

140.156 Research grant; cardiovascular. Grants designated "Research Fellowship," awarded by the American Heart Association, to aid specified individuals in the pursuit of a course of study preparatory to a career in cardiovascular research are excludable scholarship or fellowship grants. Further, such amounts are not wages subject to income tax withholding. (Sec. 3402, '54 Code.)

Rev. Rul. 58–76, 1958–1 C.B. 56.

140.157 Retirement income; credit against income tax. The credit against tax based on retirement income has no effect on the requirements for withholding on retirement income, such as pensions or retired pay, under section 3402. (Secs. 37, 3401; '54 Code.)

Rev. Rul. 55–484, 1955–2 C.B. 454.

140.158 Retirement pay. Special retirement payments made to a corporation's retired employees under a pension plan wherein such payments are based, in part, on the retired employees' entitlement to vacation pay, do not constitute wages for FICA and FUTA purposes. However, such amounts are subject to income tax withholding. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 65–276, 1965–2 C.B. 386.

140.159 Retirement pay; Armed Forces; Career Compensation Act. Treatment of retired pay received by a member of the Armed Forces who retired for physical disability prior to October 1, 1949 and elected to receive retired pay computed under the methods provided by the Career Compensation Act of 1949. I.T. 4017 amplified. §406.207. (Sec. 1621, '39 Code; Sec. 3401, '54 Code.)

Rev. Rul. 55–88, 1955–1 C.B. 241.

140.160 Retroactive pay; reinstated Federal employee. Upon separation, a Government employee received a lump-sum leave payment from which tax was withheld. In the next year, he was reinstated with retroactive pay to the date of separation. Such retroactive compensation is subject to income tax withholding even though the employee had to refund the entire amount of the lump-sum payment to the Government. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 57–603, 1957–2 C.B. 705.

140.161 School bus driver; independent contractor of services. An individual who contracts to furnish school bus service to a county school district is an independent contractor and the assistants he hires to drive the buses are his employees. Amounts received by the contractor must be considered in computing his net earnings from self-employment. Em. T. 442 superseded. §§1.1402(c)–1, 31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 1402, 3121, 3306, 3402; '54 Code.)

Rev. Rul. 72–175, 1972–1 C.B. 316.

140.162 Seagoing employees; maritime shipping operators. Procedures are set forth relating to the reporting of wages and payment of taxes with respect to seamen employed by certain maritime shipping operators. Mim. 6314 modified and superseded. §§31.6011(a)–1, 31.6011(a)–3, 31.6011(a)–4, 31.6302(c)–1. (Sec. 601.401, S.P.R.; Secs. 6011, 6302, '54 Code.)

Rev. Proc. 79–38, 1979–2 C.B. 501.

140.163 Separation allowances; laid-off railroad employees. Certain lump-sum separation and severance allowances paid to laid-off employees in the railroad industry are held to be compensation subject to the taxes imposed under the RRTA and wages subject to income tax withholding. §31.3231(e)–1, 31.3401(a)–1. (Secs. 3231, 3401; '54 Code.)

Rev. Rul. 65–251, 1965–2 C.B. 395.

140.164 Services performed in U.S. possession. Employers (other than the U.S. or any agency thereof) who are required by the law of any foreign country or U.S. possession to withhold income tax from the remuneration paid U.S. citizens on or after August 9, 1955, for services performed in a U.S. possession, should not withhold income tax from that same remuneration in behalf of the U.S. (Sec. 3402, '54 Code.)

Rev. Rul. 56–37, 1956–1 C.B. 499.

140.165 Sick leave payments. Payments made to employees under a sick leave plan for absences necessitated by death of a relative or for routine medical or dental examinations are wages for purposes of FICA and FUTA; payments made under the plan on account of illness or injury are not wages. All such payments are subject to income tax withholding. §§31.3121(a)(2)–1, 31.3306(b)(2)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 79–110, 1979–1 C.B. 317

140.166 Sick pay; vacation pay; paid beneficiary. Payments made to the estate or beneficairy of an employee representing his wages during his last illness and his salary for the remainder of the month in which he died do not constitute wages for FICA purposes; however, vacation allowances do constitute wages. The portion of the monthly salary which represents sick pay in not taxable in the hands of the recipient. Death benefits made to the estate or beneficiary of a deceased employee and payments made which represent unpaid compensation for services rendered are not subject to withholding of income tax. §§31.3121(a)–1, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 59–64, 1959–1 C.B. 31.

140.167 Special peace officers. Individuals appointed by the Governor of Kentucky to protect property, and who are subject to the property owner's direction and control in the performance of such services, are employees of such property owner for FICA and FUTA purposes. The State, having control of the payment of the officers' wages, is responsible for the income tax withholding. §§406.205, 408.204. (Secs. 1426, 1621, '39 Code; Secs. 3121, 3401, '54 Code.)

Rev. Rul. 55–544, 1955–2 C.B. 401.

140.168 Sports Area Commission. A Sports Area Commission created pursuant to an

agreement between a city and two villages to provide recreational facilities for residents is an instrumentality wholly owned by one or more political subdivisions of the state. Therefore, services performed in the employ of the Commission are excepted from employment under the FICA and FUTA. However, the remuneration for such services is subject to income tax withholding. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 65–196, 1965–2 C.B. 388.

140.169 State agency for the blind. Services performed by visually handicapped individuals for the Arizona Industries for the Blind, a wholly owned instrumentality of the State, are excepted from employment for purposes of the FICA and FUTA. However, wages paid such individuals are subject to imcome tax withholding. §§406.400, 408.204, 408.214. (Secs. 1426, 1622, '39 Code; Secs. 3121, 3402, '54 Code.)

Rev. Rul. 54–253, 1954–2 C.B. 324.

140.170 State agency for the blind. Services performed by visually handicapped individuals for a State Board of Education of the Blind, a wholly owned instrumentality of the State, are excepted from employment for purposes of the FICA and FUTA. However, such individuals are subject to income tax withholding. §408.204. (Sec. 1426, '39 Code; Sec. 3121, '54 Code.)

Rev. Rul. 54–254, 1954–2 C.B. 326.

140.171 State bank converted to national bank. Where a State bank is converted into a national bank pursuant to section 35, title 12, U.S.C., the national bank in considered the same employer and taxpayer as the State bank for employment tax purposes, including the filing of returns and the credit for contributions made by the State bank to State unemployment funds. S.S.T. 188 distinguished. §§31.3121(d)–2, 31.3301–1, 31.3302(a)–1, 31.3401(d)–1. (Secs. 3121, 3301, 3302, 3401; '54 Code.)

Rev. Rul. 68–63, 1968–1 C.B. 439.

140.172 State service corpsmen. Treatment of payments made to individuals performing services for a state service corps organized under state law to meet the critical human needs of state residents, reimbursed expenses received by individuals who serve as part-time volunteers, and stipends received by "job service corpsmen" recruited from school drop outs and the unemployed to recieve training in their efforts to obtain marketable skills. §31.3401(a)–1. (Secs. 61, 3401; '54 Code.)

Rev. Rul. 68–133, 1968–1 C.B. 36.

140.173 State soil conservation district. A soil conservation district organized and operated under Minnesota law for purposes of carrying out a state soil conservation program is a political subdivision of the state and services performed in its employ are excepted from employment under the FICA and FUTA; individuals furnished by the Soil Conservation Service of the Department of Agriculture to the district are employees of such Service, and no liability is incurred by the district under the Acts with respect to their services. However, the district is responsible for withholding income tax from wages paid its employees. §§31.3121(a)–1, 31.3306(c)(7)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 57–120, 1957–1 C.B. 310.

140.174 State youth opportunity program payments. Summer employees of a railroad company under a State youth opportunity program who as a condition of their employment are required to consent that a portion of their remuneration be withheld and paid to the State are not required to include these amounts withheld in their gross income. Such amounts are not wages for purposes of income tax withholding or compensation for purposes of the RRTA. §§31.3231(e)–1, 31.3401(a)–1. (Secs. 61, 3231, 3401; '54 Code.)

Rev. Rul. 74–50, 1974–1 C.B. 22.

140.175 Stenographer; part-time employee of two employers. Where a stenographer works, under a continuing agreement, on an hourly basis for two businessmen at frequent intervals, she is an employee of both, and each is liable for the FICA taxes and income tax withholding on the amounts paid for her services. §31.3121(a)–1. (Secs. 3121, 3401; '54 Code.)

Rev. Rul. 57–93, 1957–1 C.B. 328.

140.176 Stock; risk of forfeiture. A corporation transferred common stock to an employee subject to a substantial risk of forfeiture. The fair market value of the stock at the time the risk lapses is wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 83, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 79–305, 1979–2 C.B. 350.

140.177 Stock; stock purchase plan; employer contributions. Contributions made by a company under a stock purchase plan not qualifying under section 401 or 423 are wages for purposes of FICA, FUTA, and income tax withholding in the amount that the fair market value of the stock on the date of the crediting of the stock to the employee's account exceeds the amount of the employee's contribution. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–185, 1978–1 C.B. 304.

140.178 Stock; transferred to corporate employees by parent's majority stockholder. The fair market value of stock of a corporation that is transferred by the majority stockholder to an employee of the corporation's subsidiary whose rights in the stock are not subject to a substantial risk of forfeiture is includible in the employee's gross income and is subject to income tax withholding. Amplified by Rev. Rul. 81–45. §31.3402(a)–1. (Secs. 83, 162, 3402; '54 Code.)

Rev. Rul. 80–76, 1980–1 C.B. 15.

140.179 Stock; transferred to corporate employees by parent's majority shareholder. When a corporation's majority shareholder transfers stock of the corporation to an employee of its subsidiary, the shareholder is the employer for purposes of withholding income tax on the fair market value of the stock. However, the subsidiary, which withholds taxes on the employee's regular wages, may withhold the additional tax due. Rev. Rul. 80–76 amplified. §31.3401(d)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 81–45, 1981–1 C.B. 483.

140.180 Student-trainees; school of medical technology. Amounts paid by a school of medical technology to its student-trainees for weekend work outside its training program are wages subject to income tax withholding. However, stipends paid to the student-trainees, who are not required to perform significant services for the school as a condition to receive such stipend, are not subject to income tax withholding and are excludable from gross income as a scholarship or fellowship. §§31.3401(a)–1, 31.3402(a)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 64–29, 1964–1 (Part 1) C.B. 79.

140.181 Students; required work program. Amounts received by students who, as a condition to receiving Bachelor of Science Degrees, are required to participate in a university designated work-term period under the supervision and direction of the employers for whom they perform services, are not excludable as scholarships or fellowship grants, but are includible in gross income as compensation for services rendered and are wages subject to income tax withholding. §31.3402(a)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 73–218, 1973–1 C.B. 53.

140.182 Subsistence and rental allowance; Army contract surgeon. The subsistence and rental allowances paid in cash to a contract surgeon by the Department of the Army are wages subject to income tax withholding. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 60–66, 1960–1 C.B. 21.

140.183 Successor employer; statutory merger or consolidation. Where a statutory merger or consolidation takes place prior to the expiration of the first twenty weeks of a calendar year, the resultant corporation is subject to the FUTA tax with respect to the premerger or preconsolidation employment of individuals by the absorbed corporation and is entitled to the credits against such tax for contributions to State unemployment funds made by the absorbed corporation. The resultant corporation is also the same employer as the absorbed corporation for purposes of the FICA taxes and the withholding of income tax. §§31.3121(d)–2, 31.3301–1, 31.3302(a)–1, 31.3401(d)–1. (Secs. 3121, 3301, 3302, 3401; '54 Code.)

Rev. Rul. 62–60, 1962–1 C.B. 186.

140.184 Supplemental unemployment benefits. Benefits paid to former employees of a company from a particular trust pursuant to a supplemental unemployment benefit plan established as a result of a collective bargaining agreement do not constitute wages; however, the benefits are includible in gross income in the year received. Amplified to provide similar treatment where plans are unilaterally constitued by the employer, and where benefit payments are made by an employer direct to certain qualifying former employees under such a plan which does not involve the use of a trust. Distinguished by Rev. Ruls. 61–68 and 80–124; Amplified and modified by Rev. Rul. 77–347. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 56–249, 1956–1 C.B 488; Rev. Rul. 58–128, 1958–1 C.B. 89; Rev. Rul. 60–330, 1960–2 C.B. 46.

140.185 Supplemental unemployment benefits. Benefits paid to former employees of a company from a trust fund, established pursuant to a supplemental unemployment compensation benefits plan, are not "wages" for purposes of FICA and FUTA but are subject to income tax withholding. Rev. Ruls. 56–249 and 58–128 amplified and modified. §§31.3121(a)–1, 31.3306(b)–1, 31.3402(o)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 77–347, 1977–2 C.B. 362.

140.186 Supplemental unemployment benefits; employer contibutions. Contributions conveying fully vested and nonforfeitable interests made by an employer into separate and independently controlled security benefit trusts for each employee, each trust created pursuant to a collective bargaining agreement to furnish unemployment and certain other benefits to eligible employees, are subject to FICA, FUTA, and income tax withholding at the time paid into the trusts. Such contrubutions constitute additional compensation to the employees and are includible in gross income in the taxable year the contributions are made. Modified by Rev. Rul 57–528 to provide that where the employees' rights are nonforteitable, employer contributions are taxable to the employee under section 402(b). §31.3121(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–37, 1957–1 C.B. 18.

140.187 Supplemental wage payment. Payments made under an eligible state deferred compensation plan are subject to income tax withholding and under certain circumstances are to be treated as supplemental wage payments. §§31.3401(d)–1, 31.3402(g)–1. (Secs. 3401, 3402; '54 Code.)

Rev. Rul. 82–46, 1982–1 C.B. 158.

140.188 Supplemental wages. Whether certain payments made to employees may be treated as supplemental wage payments and whether the flat 20 percent rate may be used for income tax withholding is discussed. The employer should follow the guidelines in Rev. Rul. 66–190 for withholding income tax on supplemental wage payments where an employee receives both regular wages and supplemental wages. §31.3402(g)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 66–294, 1966–2 C.B. 459.

140.189 Survey by state and Federal Government. Individuals engaged under a cooperative arrangement between a state and the Geological Survey of the Department of the Interior are held to be employees of the Geological Survey, and the Department of the Interior is responsible for determining whether their services constitute employment for Federal employment tax purposes. However, the state has control over the payment of the wages and is required to withhold income tax and file returns and pay the tax so withheld. §31.3121(d)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 57–22, 1957–1 C.B. 318.

140.190 Teachers; June wage payment. A school which ordinarily pays its teachers semimonthly, but in June makes a single payment to each teacher which includes six semimonthly installments of wages should compute the income tax withholding as though it were making six separate semimonthly payments. §31.3401(b)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 65–231, 1965–2 C.B. 398.

140.191 Teachers; penalties deducted from salary after illegal strike. The penalties imposed by state law and deducted from the county schoolteachers' salaries after their illegal strike are wages for purposes of income tax withholding. §31.3401(a)–1. (Secs. 61, 162, 3401; '54 Code.)

Rev. Rul. 76–130, 1976–1 C.B. 16.

140.192 Teaching interns; payments by board of education. Amounts received by teaching interns who perform services as temporary teachers for a local board of education are not excludable as scholarships, but represent compensation for services rendered and are wages subject to income tax withholding. §31.3402(a)–1. (Secs. 117, 3402; '54 Code.)

Rev. Rul. 67–443, 1967–2 C.B. 75.

140.193 Tips; minimum wage law. The amount of tips or gratuities accounted for by an employee to the employer, to the extent required for compensation determination under the provisions of a state minimum wage act, constitutes wages for employment tax purposes and income tax withholding. S.S.T. 301 distinguished. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 58–168, 1958–1 C.B. 343.

140.194 Tips and regular wages. Employers whose employees receive both regular wages and tips may, in computing the amount of income tax to be withheld, either (1) treat the tips as if part of the current or preceding wage payment and use the regular graduated withholding rates, of (2) if income tax has been withheld from the regular wage payment, determine the tax to be withheld from tips by using a flat 20 percent rate. §31.3402(g)–1. (Sec. 3402. '54 Code.)

Rev. Rul. 66–190, 1966–2 C.B. 457.

140.195 Tool allowance paid employees. A tool allowance paid by a company to each of its union employees regardless of whether they use their own tools or those furnished by the company is a part of the company's wage structure and is, therefore, subject to employment taxes and income tax withholding. §§31.3121(a)–1, 31.3306(b)–1. 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 65–187, 1965–2 C.B. 382.

140.196 Transportation allowance. Reimbursement received after 1976 by an employee from an employer for certain expenses incurred in traveling between the employee's residence and place of work will be considered "wages" for purposes of FICA, FUTA, and income tax withholding. Rev. Ruls. 190 and 59–371 revoked. Rev. Ruls. 54–497, 55–109, 61–67, and 63–82 modified. §§31.3402(a)–1, 301.7805–1. (Secs. 62, 162, 262, 3402, 7805; '54 Code.)

Rev. Rul.76–453, 1976–2 C.B. 86.

140.197 U.S. possession; Guam. Principles are outlined for determining the liability incurred by a citizen of the U.S. for reporting and paying income tax in respect to earned income derived from the performance of personal services on Guam, and by an employer for withholding income tax on wages paid U.S. citizens for employee services performed on Guam. §405.102. (Sec. 1621, '39 Code; Sec. 3401, '54 Code.)

Rev. Rul. 8, 1953–1 C.B. 300.

140.198 Unemployment benefit trust; repayment by employees. Forms W–2 should not reflect either the wages or income tax withheld of employees who received benefit payments under a supplemental unemployment benefit plan and later repaid to the trust the amounts received within the same taxable year prior to the time their Forms W–2 were issued and after adjustments to the withholding were made pursuant to section 6413 of the Code. However, if such repayments are made after the Forms W–2 were issued, but within the same calendar year, the trust should furnish Corrected Forms W–2. §§31.6051–1, 31.6413(a)–1. (Secs. 6051, 6413; '54 Code.)

Rev. Rul. 78–198, 1978–1 C.B. 433.

140.199 Unordained religious worker. Unordained members of a religious denomination which provides for ordination of ministers, commissioned by a church or related religious organization without investing them with the authority of ordained ministers, do not qualify as duly ordained, commissioned, or licensed ministers of a church for purposes of the FICA, SECA and income tax withholding. Modified by Rev. Rul. 78–301. §§1.1402(a)–11, 31.3121(b)(8)–1, 31.3401(a)(9)–1. (Secs. 1402, 3121, 3401; '54 Code.)

Rev. Rul. 65–124, 1965–1 C.B. 60

140.200 Vacation pay; employers' association trust. Vacation allowances paid by a trust under an agreement between an employers' association and the union are wages where such allowances are based on services rendered by the employees for their employers. Liability for the taxes on such wages is incurred at the time the vacation allowances are paid. The trustees are responsible for the withholding of income tax, and the employers for whom the services were performed are liable for the FICA taxes. Distinguished by Rev. Rul. 67–351. §§31.3121(a)–1, 31.3306(b)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 57–316, 1957–2 C.B. 626.

140.201 Volunteer fire departments' employees; Pennsylvania. Services performed by employees of volunteer fire departments organized under the laws of Pennsylvania are excepted from employment for purposes of the FICA and FUTA; however, wages paid such employees are subject to income tax withholding. §§31.3121(b)(7)–1, 31.3306(c)(7)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3402; '54 Code.)

Rev. Rul. 70–484, 1970–2 C.B. 201.

140.202 Wages; contributions to employee pension plan. Contributions of a school district that assumes and pays, or "picks up," the required contributions of its teachers to the qualified state pension plan are employer contributions to the plan and are excludable from employees' wages for purposes of income tax withholding. §31.3401(a)–1. (Secs. 402, 414, 3401; '54 Code.)

Rev. Rul. 77–462, 1977–2 C.B. 358.

140.203 Wages; leave plan. Payments made to employees for periods of sickness or accident disability, and identified as such, under a company leave plan that permits employees to be absent from work a certain number of days each year for sickness, vacation, or holidays are not wages for purposes of the FICA and FUTA; however, other payments for vacation or holidays are wages. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 78–392, 1978–2 C.B. 251.

140.204 Wages; regular and additional amounts in single payment. When an employer pays an employee regular wages and additional amounts in a single payment and specifically indicates the amount of each, the employer may withhold income tax at a flat 20 percent rate on the portion of the payment representing supplemental wages, if tax is withheld on the portion of the payment representing the employee's regular wages at the appropriate rate. Rev. Rul. 67–88 revoked. §31.3402(g)–1. (Sec. 3402, '54 Code.)

Rev. Rul. 82–200, 1982–2 C.B. 239.

140.205 Wages; reimbursed lunch expenses to employees while on company travel. Reimbursements made to employees in 1963 by the employer for lunch expenses incurred while on company travel but not away overnight are not wages subject to income tax withholding.§31.3401(c)–1. (Sec. 3401, '54 Code.)

Central Illinois Public Service Co., 435 U.S. 21, Ct. D. 1989, 1978–1 C.B. 310.

140.206 Wages; voluntarily returned; corporate officer. A corporate officer's voluntary return of a portion of his salary to the corporation does not affect the tax liability previously incurred nor give rise to a refund or credit of any portion of the taxes. S.S.T. 223 superseded. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 71–289, 1971–2 C.B. 339.

140.207 Work program of State under Manpower Development and Training Act. Participants in a State program, established to provide short-term employment in disaster relief activities for unemployed individuals and funded under the Manpower Development and Taining Act of 1962, are employees of the State excepted from employment for purposes of the FICA and FUTA, but the payments made to them are subject to income tax withholding. §§31.3121(d)–1, 31.3306(i)–1, 31.3401(c)–1. (Secs. 3121, 3306, 3401; '54 Code.)

Rev. Rul. 74–413, 1974–2 C.B. 333

140.208 Work relief program; State welfare agency. Payments to welfare recipients by a State welfare agency, under its work relief program, equal to the number of hours actually worked times the applicable hourly rate are compensation for services rendered. Such payments are includible in gross income and are wages sub-

ject to income tax withholding even though the recipient would not receive a smaller amount if he were unable to work or work were not available. Cash or payments in kind, such as food or other items, not directly attributable to services performed, are not includible in gross income or subject to withholding. Modified by Rev. Rul. 71–425. §31.3401(a)–1. (Sec. 3401, '54 Code.)

Rev. Rul. 67–144, 1967–1 C.B. 12.

140.209 Work-study programs; Economic Opportunity Act; payments by college. Payments made by a college to student-employees who participate in a work-study program established under Title I-C of the Economic Opportunity Act of 1964, and to individuals who are employed full time by the college during the summer vacation period are compensation for services and are includible in recipient's gross income and are subject to income tax withholding. Payments for services performed for the college are subject to the taxes imposed by the FICA only if the services of the employee are employment. §§31.3121(b)(8)–2, 31.3121(b)(10)–1, 31.3121(b)(10)–2, 31.3402(a)–1. (Secs. 3121, 3402; '54 Code.)

Rev. Rul. 66–285, 1966–2 C.B. 455.

140.210 Work-training program; Comprehensive Employment and Training Act. Payments to a trainee in a program under titles I and II of the Comprehensive Employment and Training Act for services performed during on-the-job training for a private construction company are wages subject to the FICA, FUTA, and income tax withholding. Such payments for work experience in a city clinic are wages subject to income tax withholding but the services are excepted from employment for FICA and FUTA purposes. Payments and allowances for which no services are performed, however, are not wages for employment tax purposes. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1. (Secs. 61, 3121, 3306, 3401; '54 Code.)

Rev. Rul. 75–246, 1975–1 C.B. 24.

140.211 Work-training programs; Indians. Payments made under both Title II-a of the Economic Opportunity Act of 1964 and the Manpower Development and Training Act of 1962 to unemployed and underemployed residents of an Indian reservation who participate in a training program to acquire skills in the construction trades are not wages subject to employment taxes and income tax withholding. Further, such payments fall in the same category as other unemployment relief payments and are not compensation for services includible in gross income. §§31.3121(a)–1, 31.3306(b)–1, 31.3401(a)–1, 31.3402(a)–1. (Secs. 3121, 3306, 3401, 3402; '54 Code.)

Rev. Rul. 68–38, 1968–1 C.B. 446.

140.212 Work-training programs; probationers. Stipends paid by a city to unemployed or underemployed probationers who are participants in a project established for the purpose of reducing their recidivism to crime and aiding them in acquiring training and skills to enhance their opportunities for gainful employment are not wages for purposes of the FICA or income tax withholding. Futhermore, such stipends fall in the same category as other relief payments and are not includible in gross income. §§31.3306(b)–1, 31.3401(a)–1. (Secs. 3306, 3401; '54 Code.)

Rev. Rul. 72–340, 1972–2 C.B. 31.

140.213 Work-training programs; State welfare agency. Payments made by a State welfare agency to participants in work-training programs, such as a program under Title V of the Economic Opporuntity Act of 1964, that are equal to and in lieu of welfare payments the participant would otherwise receive are neither includible in gross income nor considered wages for FICA or income tax withholding purposes. If such payments exceed the amount that would have been received without working the entire amount will be considered as taxable gross income and wages, except to the extent that it can be shown that the amount received exceeds the fair market value of the services. Rev. Rul. 67–144 modified to the extent it holds that payments received under the facts therein and includible in gross income. §§31.3306(b)–1, 31.3401(a)–1. (Secs. 3306, 3401; '54 Code.)

Rev. Rul. 71–425, 1971–2 C.B. 76.

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